

NAMIBIA

Technical Memorandum

**Namibia Labour administration
and inspection needs assessment**

LAB/ADMIN

**Labour Administration
and Inspection Programme**

Social Dialogue Sector

International Labour Office – Geneva

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List of Acronyms

ADR	Alternative Dispute resolution
ALMPs	Active Labour market Policies
APP	All People's Party
CCMA	commission for Conciliation Mediation and Arbitration
COD	Congress of Democrats
DTA	Democratic Turnhalle Alliance of Namibia
EEC	European Economic Community
GDP	Gross Domestic Product
CDPR	Committee for Dispute Prevention and Resolution
HIV/AIDS	Human Immunodeficiency Virus/Acquired immunodeficiency syndrome
ILO	International labour Office
LAC	Labour Advisory Council
LFS	Labour Force Survey
MAG	Monitor Action Group
NAD	Namibian Dollar
NEF	The Namibian Employers' Federation
NLFS	National Labour Force Survey
NUDO	National Unity Democratic Organization
PES	Public Employment Services
PMS	Performance Management System
PS	Permanent Secretary

Terms of Reference and Methodology

The State, through its labour administration system, bears a heavy responsibility in the field of labour and social affairs – most importantly to guarantee fundamental human rights (such as freedom of association, the right to bargain collectively or equal treatment), to ensure decent working conditions, to combat discrimination, to promote full employment, to safeguard social peace, and protect citizens against economic risks.

The ILO, through its labour administration and labour inspection programme (LAB/ADMIN), provides a wide array of services to national labour administration systems, namely to ministries of labour. Implementation of labour administration/inspection needs assessments is one of the possible interventions – helping the Member States to identify gaps in the capacity of their national labour administration systems and to open a debate about possible ways of addressing them. Obviously, such a needs assessment is only a first step; it needs to be followed by an implementation plan and, if required, by more specific interventions of the ILO, addressing specific technical areas or providing specialized training to specific categories of the Ministry's employees.

With the request of the Permanent Secretary of the Namibian Ministry of Labour and Social Welfare, Mr. Peter Mwatile, the ILO sent a technical mission (further referred to as Mission) to Namibia, composed of Limpho Mandoro (ILO, Pretoria) and Ludek Rychly (ILO, Geneva), to elaborate a technical memorandum with the objective to contribute to strengthening and improving of the implementation mechanism and human resources capacity of the Ministry, in order to deliver services in an effective and efficient manner.

The terms of reference of the mission were fine tuned during the Mission's stay in Namibia, especially at the meeting with the Minister of Labour and Social Welfare and two meetings with the Permanent Secretary.

Based on these meetings, the main focus of the Mission was on:

- The mandate of the Ministry;
- The overall internal structure;
- Key technical departments (Labour Commissioner, Commission for Equal Opportunities, Labour Services, Labour Market Services, International Affairs); and
- Some cross-cutting issues, especially the functioning of field offices and issues related to the Ministry's staffing and management.

It was agreed that the draft Memorandum will be submitted to the Permanent Secretary for comments before the end of November 2011 and it will be followed by other mutually agreed steps, including an audit of human resources. The final version of the Memorandum should be thus available in February 2012.

Summary of Recommendations

Labour administration system

To review the needs of inter-ministerial cooperation in fields related to the Ministry's mandate. To this extent, consider the signing of Memoranda of Understanding covering specified areas of mutual interest and/or create joint working groups and/or organize regular consultations with selected partner ministries. The Ministry of Labour and Social Welfare should play a stronger role in coordinating issues related to labour policy. More specifically, it should play a stronger role in coordination and implementation of policies focused on creation of decent job opportunities. The Minister should consider elaboration and adoption by the Government of a National Labour Policy.

Mandate of the Ministry

The role of the Ministry in promotion of employment and implementation of labour market measures, including related areas such as training programmes for the unemployed, should be strengthened. However, to implement these additional tasks, the Ministry should be better equipped in terms of budget and qualified staff. It is therefore recommended to submit a comprehensive document to the Government, suggesting policy, organizational and financial measures necessary to elaborate and implement national employment policy underpinned by appropriate institutional and financial arrangements at the government level¹.

Organizational structure of the Ministry

To review the organizational structure of the Ministry, in order to systematically structure the key mandates of the Ministry (labour, employment, inspection, industrial relations, social protection). Special attention should be given to institutional arrangements of areas of industrial relations and labour legislation, which are not currently sufficiently supported. In a medium term, creation of an agency responsible for dispute settlement could be envisaged. Similarly, in a medium term, an equal opportunities agenda could be incorporated in general labour inspection. Inter-departmental cooperation should be promoted, both at the Head Office and in the field, in the interest of coherent policies and efficient delivery of services to the population.

Dispute resolution

The mission has no firm opinion on whether the Office of the Labour Commissioner should be an autonomous agency or not. However, the mission recommends more consultations at the national level on this subject in the future and an option of creation of a separate agency should therefore be seriously considered. It may also be helpful to undertake an analysis of the performance of similar institutions in the region and assess what would be best for Namibia;

Conciliators and arbitrators should take advantage of courses given by the International Training Centre of the ILO, Turin and other institutions in the region. The Government could discuss the possibility of continuing to offer specialized courses on conciliation and arbitration with the University of Namibia and other duly accredited training institutions in the country;

¹ It is useful to remind, that the DWCP for Namibia (2010 to 2014) underlines the “need for the development of an employment policy, mainstreaming employment in national development framework and identification of a national structure mandated to coordinate and monitor employment creation.”

The mission was informed that a new Labour Advisory Council (LAC) was recently set up. It is therefore, recommended that steps be taken to strengthen the capacity of the Committee for Dispute Prevention and Resolution for it to discharge its mandate as provided for in the law;

That the Committee for Dispute Prevention and Resolution designs a policy and guidelines on dispute prevention for approval by the LAC as mandated by the Labour Act so as to provide a framework within which the Office of Labour Commissioner will operate. The guidelines can include information booklets on effective ways for prevention of disputes, education and training manuals, awareness raising programmes, problem solving services and interventions at the workplace etc.

Labour inspection

Following the recommendations of the ILO technical mission in 2005 to integrate both general and occupational labour inspections, the Mission once again recommends a closer collaboration between the two inspectorates, both at the Head Office and in the Field during elaboration of inspection plans and implementation of inspection visits.

The Regulations on the Health and Safety of Employees at Work, 1997 be reviewed to better streamline and consolidate responsibility on occupational safety and health under one authority.

The mission was informed of the effort currently underway by the Ministry to fill vacant posts. The mission would therefore recommend that this process be expedited, and that efforts be made to select candidates with appropriate qualifications. Newly recruited candidates should be properly inducted into their jobs.

The Ministry is encouraged to have regular retreats with field staff to boost their morale and enhance their integration into the Ministry. In future, the Ministry may adopt a human resources policy, which encourages rotation of staff.

The Ministry is encouraged to take advantage of ILO technical assistance to Namibia and request ILO to undertake an analysis of the national law, policy and practice in relation to labour inspection with a view to identifying any gaps regarding conformity with the provisions of Convention No. 81.

Industrial relations

After consultation with representative social partners' organizations, to formulate the Ministry's policy in the field on industrial relations based on requirements of the Labour Act, but also on the needs of employers and workers. To envisage the creation of a specific directorate or division to deal with industrial relations issues.

In consultations with the most representative employers' and workers' organizations to launch a discussion on the model of national/regional tripartite social dialogue appropriate for Namibia, including evaluation of the current functioning of the LAC, its competencies and working methods. In order to enrich these consultations, it is recommended that the tripartite partners familiarize themselves with the various social dialogue models in the region and elsewhere and assess their effectiveness. This will enable the tripartite partners to determine the mandate and composition of a suitable model for the country.

The technical capacity of the LAC and its sub-committee should be built to strengthen their role. Furthermore, benchmarking with similar institutions in the region (Essential Services Committees of South Africa and Swaziland, and the governing bodies of dispute

prevention and resolution in Lesotho, Swaziland and South Africa) and in other regions will be helpful.

The research capacity of the secretariat needs to be strengthened for it to effectively provide support to the LAC. This includes assigning staff with relevant qualifications in the areas of work within the mandate of the LAC.

As provided for in the Labour Act, the LAC should develop rules to govern its meetings and business. The rules can include, amongst others, mechanisms for the setting of the agenda for LAC meetings and organization of its business; a system of feedback on the implementation of agreements and decisions; and the evaluation of progress made.

Equal opportunities

In the short term, to pay increased attention to the quality of the staff through better training, improved recruitment procedures and better motivation. A formal cooperation with labour inspection services should be established.

In the long term, equal opportunities should be integrated with inspection of general labour and employment conditions, which would require an amendment to the Act.

Labour legislation

To create a labour legislation unit (2 or 3 labour lawyers) in charge of analysis of needs of further legal developments, preparing inputs to legal drafts, providing advice to workers and employers and their organizations, on increasing awareness of labour law matters and on providing appropriate training.

Labour market services

It is recommended, as a priority issue, to strengthen the capacity of the Ministry to provide timely information on the labour market developments, including analysis of underlying problems and their disaggregation at the regional and sectoral levels, and formulate policy recommendations;

It is recommended to open wide consultations among employment officers in the Head Office and in the field on the application of the new provisions of the Employment Service Act, especially on the reporting obligation of employers and on use of inspection powers;

It is recommended to evaluate the application of the new Act 12 months after its entry in force. To consult with social partners on this issue and to prepare, if necessary, amendments to the Act or necessary organizational matters.

Social welfare

Since social assistance is another form of social security, it is recommended that Government considers the possibility, in the long run, of transferring the administration of these benefits to the Social Security Commission which has specialized knowledge and capabilities to administer various forms of social security;

Consolidation of the system under one Ministry should be expedited so as to improve on the accountability necessary for payment of public funds and in line with sound financial management procedures and practices;

Consideration should be given in the computerization of the system at all levels to improve on data collection;

Government should consider developing a policy to give more guidance on the criteria to be used on the assessment of a degree of disability; and

Staffing levels in the Directorate be reviewed to enable effective service delivery to beneficiaries beyond the existing administrative centres.

International affairs

It is recommended to create a unit, attached to the Permanent Secretary's Office, dealing exclusively with international labour affairs. This unit should be able to not only develop international relations in the field of labour and support technical cooperation programmes provided to the Ministry, but also to support research needs of technical departments by gathering and analysing relevant comparative information in the international labour field. Secretariat of the LAC, currently part of the international affairs and advice unit, should be part of the unit dealing with industrial relations.

Budget and staff matters

Despite recent strengthening of the staff of the Ministry, the overall level of staffing seems rather weak in terms of the overall number and quality of functionaries, with big gaps between units and individuals. However, the Mission could not assess this issue in detail. It is therefore recommended to proceed in the near future with a comprehensive audit of the staff, the terms of reference of which are attached to this Memorandum as an annex;

Since the impact of TIPEEG is only temporary, the Ministry should be able to develop active labour market measures addressing both high unemployment rate and lack of qualified workers. Development of training programmes that could be offered to job seekers through employment services could be envisaged. This would obviously require strengthening of the Ministry both in terms of staff of employment services and budget for labour market programmes;

To take measures to speed up filling of vacant posts with qualified candidates;

To review the training needs of technical departments in order to address needs related to new legislative Acts and other urgent needs, and to this end cooperate more with outside partners in training specialized categories of personnel.

Performance management

To evaluate the results of the pilot stage of PMS and take into account regional and international experience with performance measurement specifically in the field of labour services and labour market services.

Field services

To review the regional structure to improve coverage by the Ministry's services. Substantial reinforcement by additional qualified staff, especially labour inspectors and employment officers is needed to increase the impact of these services. Taking into account the vast territory, creation of further small contact offices might be considered, especially for labour inspection purposes;

In each regional office, to create a position of administrative manager with clearly defined powers. To review the process of their selection and remuneration.

Technical units, represented in field labour offices, should elaborate joint regional plans addressing priorities of the region. Supervisors at the Head Office level should be motivated to promote elaboration and implementation of these joint plans.

To decentralize decision-making in use of transport, travel authorization, approving of paid leave and use of communication means.

To provide more support to the regions in terms of regional and sectoral analysis of the labour market and to address local training needs (IT, Employment Services Act, Labour Act).

Labour services could envisage implementing joint inspections; they should use systematically a joint inspection form;

To open a discussion on how to limit the administrative burden of labour and employment officers and to shift the work outside of the office.

ILO Conventions

It is recommended to elaborate, in consultations with representative organizations of workers and employers, a strategy for ratification of ILO standards, taking into account implementation and reporting capacities of the Ministry.

It is recommended to envisage ratification of ILO Conventions dealing with governance issues, namely: Labour Inspection Convention, 1947 (No.81), Labour Inspection (Agriculture) Convention, 1969 (No. 129), and Employment Policy Convention, 1964 (No. 122).

1. Political Background

1.1. Political History

Namibia fought for independence from the South African administration for 30 years before it was granted finally in February 1990. Namibia has since been governed by the South-West Africa People's Organization (SWAPO). The new government was praised by the international community, for carrying out a peaceful resolution to a territorial dispute, which dated back to 1878, declaring Walvis Bay to be an integral part of Namibia. Sam Nujoma led the country for 14 years following its independence, and was later replaced by the current President Hifikepunye Pohamba, in late 2004.

1.2. Current Political Conditions

The Prime Minister (currently Nahas Agula), along with his cabinet, are appointed by the President. There are two chambers of parliament, comprised of the National Council, primarily an advisory body, and the National Assembly. Members of the 72-seat National Assembly are elected on a party list system in succession to the presidential elections (next to be held in 2014). The members of the 26-seat National Council are determined from the elections for Regional Councils every 6 years (next to be determined in 2016). The judicial structure in Namibia consists of a Supreme Court, the High Court, and lower courts. The judiciary is independent from the government and legislature.

The government is in the process of decentralisation into 13 administrative regions: Caprivi, Erongo, Hardap, Karas, Khomas, Kunene, Ohangwena, Okavango, Omaheke, Omusati, Oshana, Oshikoto, and Otjozondjupa. It has a democratic multiparty system, with

a president elected for up to two five-year terms. Apart from SWAPO, the list of other political parties includes: All People's Party (APP), Congress of Democrats (COD), Democratic Turnhalle Alliance of Namibia (DTA), Monitor Action Group (MAG), National Unity Democratic Organization (NUDO), Rally for Democracy and Progress (RDP), Republican Party (RP), South West African National Union (SWANU), and United Democratic Front (UDF). The results of the last election were challenged and deemed to be fraudulent by an opposition party, which was eventually dismissed by the High Court for lack of evidence. However, the court criticized the Electoral Commission of Namibia for conducting elections in a manner that could arouse suspicion.

Namibia's foreign relations are primarily concerned with developing and strengthening ties with the Southern African region. They are a vocal advocate for greater regional integration.

2. Economic Background

2.1. Basic Economic Information

Namibia has experienced a steady average growth of 4 per cent, with a Gross Domestic Product figure of \$13.8 billion in 2011². This figure is relatively high among developing countries, and is closely linked to its relationship with the South African economy as its major trading partner, with the Namibian Dollar (NAD) of equal value to the South African Rand (ZAR). Until 2010, Namibia drew 40 per cent of its revenues from the South African Customs Union, but this has since dropped due to the effects of the global economic crisis. The Bank of Namibia regularly follows actions taken by the South African Central Bank, with the NAD and ZAR both being a legal tender in Namibia.

Most of the country's wealth can be attributed to the modern market sector, but between 25-40 per cent depends on the traditional subsistence sector of agriculture and herding. This has been supported by government initiatives of selective expropriation to foreign landowners in order to resettle landless Namibians. Much of the economy is heavily dependent on revenue generated from primary commodity exports including minerals, livestock and fish.

Namibia relies heavily on its trading relationship with South Africa. Over 80 per cent of its imports originate here, and many exports are destined or transited in this country. Outside of South Africa, the UK is the chief market for Namibian exports, such as fish and meat. Mining accounts for 8 per cent of the GDP but provides more than 50 per cent of the foreign exchange earnings. Agriculture accounts for approximately 5 per cent and the fish industry is 4 per cent of the GDP.

Namibia is a leading advocate of regional economic integration, with its favourable location and excellent transport and communications base. It belongs to the Southern African Development Community (SADC) and Southern African Customs Union (SACU). As a result of the latter, no tariffs exist on the production and trade of goods within the member states. The SACU also plan to negotiate free trade agreements with China, India, Kenya, and Nigeria.

² Statistic obtained from the 2011 Index of Economic Freedom [<http://www.heritage.org/index/country/Namibia>].

2.2. Labour Market

The total population of Namibia recorded in 2008 was 1,789,933, of which 940,844 were female and 849,089 were males³. The majority of the population (approximately 64.9 per cent) resides in rural areas, with approximately 15.9 per cent of the population concentrated in the Khomas region. There is a highlighted need for more developmental programmes in rural areas in order to curb the problem of rural-urban migration.

There is a wide variation of employment figures in Namibia across regions, area and by sex. This uneven distribution varies from a low of 11.9 per cent in Omusati region, to a high of 57.8 per cent in Erongo region. The employment figure is higher in urban areas than in rural areas, with figures of 51.9 per cent compared to 22.2 per cent. Males have a higher employment to population ratio of 41.6 per cent, than women with 28.5 per cent. Various programs can aid the facilitation of employment to even these figures out, such as promoting entrepreneurial activities in disadvantaged regions.

The agriculture industry has continuously been the biggest employing industry, accounting for a total of 15.9 per cent of the employed workforce. There is wide variability in occupational distribution across industrial categories. For example, the agricultural industry is dominated by skilled agricultural workers, while private household workers tend to have elementary occupations. The wholesale and retail trade industry has a high intake of service, shop and market sale workers, whereas professionals dominate the education, health and social work sectors.

Significant attention needs to be paid to the deteriorating unemployment situation, which was last reported to be at the rate of 51.2 per cent. The lack of improvement of this figure over the years reflects the lack of employment-friendly economic and employment policies, indicating a need for collaborated efforts from all social partners in re-evaluating effective job creation strategies.

As with employment, unemployment rates have regional disparities. This rate is higher in rural areas (64.9 per cent) than in urban areas (36.4 per cent). The two northern regions of Omusati and Ohangwena are the worst affected regions with high rates of 78.6 per cent and 76.4 per cent respectively. The NLFS 2008 report suggested that regional economic development planning services would be beneficial in helping communities develop the local economy and generate new employment and investment opportunities by identifying and marketing regional resources, potential areas of development, and opportunities to potential investors. An exacerbating factor to the unemployment situation is the length of unemployment: 72.2 per cent of unemployed have been unable to get a job for 2 years or more, with more females (75.3 per cent) in this position than males (67.8 per cent).

Unemployment is particularly prominent among youth with an average rate greater than 60 per cent. This could be due to low educational qualifications and lack of marketable skills and job experience. An urgent government intervention is required, with special emphasis on entrepreneurial skills training in order to encourage the youth to start their own income-generating projects. Vocational training institutions should be more accessible to youth to encourage skills development. It should also be a priority to carefully assess the curriculum in connection with an assessment of likely labour demand, and to link the training with the skills needs of the private sector. This intervention should be congruent with development of local economic development plans through local partnership in assessing the skills needs of likely labour demand.

³ Information obtained from the Namibia Labour Force Survey (NLFS) 2008.

2.3. Statistics

The Labour Force Survey 2008 found that the labour force participation rates (employed and unemployed workers) consist of 55.4 per cent of the population. This figure has not significantly improved according to statistics from two previous Labour Force Surveys. Employment is unevenly distributed across regions, ranging from 11.9 per cent in Omusati, to 57.8 per cent in Erongo. The mining sector contributes 12.7 per cent to the country's GDP, while the agriculture sector only 5.4 per cent. However, these percentages do not provide an indication of employment creation as mining only contributes a mere 2.7 per cent, while agriculture contributes 15.9 per cent. The industries with the most employment are in Agriculture, Wholesale and Retail Trade, and Private Households with employed persons. Agriculture is dominated by skilled workers, while Private Households include a high intake of elementary occupations.

Between 2000 and 2008, there was a continuous deterioration in unemployment rates (persons actively seeking a job) from 20.2 per cent to 37.6 per cent. The age group with the highest unemployment rate is that of 15-34 years, with an unemployment rate of 59.9 per cent, referred to as the unemployed youth. This could be due to the very basic education levels in Namibia. Some 45.3 per cent have completed primary education; only 10.6 per cent have attained a senior secondary education level; and approximately 4 per cent pursuing further education. It was reported that 13.6 per cent of the population lacked formal education.

3. Legislative Framework

Prior to Namibia's independence, its labour relations was characterized as unstable, with frequent occurrences of industrial unrest and disharmony between employers, employees and trade unions. This was a result of resistance to oppressive mechanisms of the South African apartheid regime, such as systematic discriminatory policies on wages, or labour conditions based on race, gender, ethnicity and political affiliation. In addition to the unfair conditions of employment, the inadequate occupational health and safety standards, and lack of freedom of association further exacerbated the labour conditions.

With independence came huge political reforms, with the Namibian government pursuing economic growth and social progress. It sought to eradicate poverty and promote strong social policies, justice, and democratic institutions in order to create broad-based sustainable development. It adopted some of ILO conventions, and established the Labour Advisory Council, a tripartite forum. Most importantly, it initiated the enactment of various pieces of labour legislation to guarantee the rights of workers through labour, social security, anti-discrimination, and affirmative action acts.

The main laws that emerged from the reforms are:

- The Labour Act No. 6 of 2007 (replacing the Act of 1992)
- The Affirmative Action (Employment Equity) Act No. 29 of 1998
- The Social Security Act No. 34 of 1994
- The Employment Service Act No. 8 of 2011
- The Public Service Act No. 13 of 1995
- The Employees Compensation Amendment Act No. 5 of 1995
- The Pension Funds Amendment Act No. 5 of 2011

3.1. The Labour Act No. 6 of 2007

Independent Namibia's first Labour Act (No. 6 of 1992) was in the process of review in the late 1990's and discussions took place within the tripartite Labour Advisory Council. Rather than amending the Act, it was decided it was best to draft a new Act. This resulted in a new Labour Act (No. 15 of 2004) that was passed by parliament, but was never fully implemented. Notable shortcomings were identified by the government, employers, unions and the ILO. A new Labour Bill was therefore tabled in Parliament in 2007. This Bill became the Labour Act (No. 11 of 2007), and sets the framework for Namibia's labour relations and working conditions for years to come.

The main aim of this Act is to promote and maintain the welfare of the people of Namibia, and further employee relations conducive to economic growth, stability and productivity. This Act applies to all employers and employees operating within Namibia, but not exclusive of employers who are incorporated or registered outside Namibia. It includes promotion of an orderly system of free collective bargaining; improving wages and employment conditions; advancing individuals who have been disadvantaged by past discriminatory laws and practices; promoting sound labour relations and fair employment practices by encouraging freedom of association; setting minimum basic conditions of service; and giving effect to the conventions and recommendations of the International Labour Organisation.

The Labour Act 2007 is only applicable to 'employees' and not consultants of independent contractors who operate on behalf of an entity. Minimum wages are sector specific. It also sets standards to working hours, different types of leave, provides legal protection for health, safety and welfare, and includes employees' basic rights. All basic conditions in the Act are obligatory unless employers and employees negotiate above these standards.

The Namibian Employers' Federation (NEF) reported some major criticisms about the most recent Labour Act which they deemed to be inappropriate, unbalanced and as a disincentive to job creation. The Labour Act is crucial for ensuring job creation, the key to social and economic stability, investment performance, and growth. For example, the conditions that restrict the termination of employees are criticized as the NEF argue that employers have no interest in terminating good and reliable workers, but rather those that are 'unreliable and non-productive'. Accordingly, these restrictions create a less flexible workforce. It is viewed that the restrictive labour market will leave Namibia in a vulnerable position during the next global crisis. However, they do not promote more relaxed regulation; they propose smarter regulation. This means reviewing, updating and refining approaches that reflect national circumstances, and balance aims of regulating with wider considerations of the impact on business capability and job creation.

3.2. The Affirmative Action (Employment Equity) Act No. 29 of 1998

This Act attempts to advance equal opportunity in employment, by improving the disadvantaged conditions of certain groups arising from past discriminatory laws and practices, through appropriate affirmative action plans. This Act also provides for the establishment and appointment of an Employment Equity Commission with the function to establish awards recognizing achievements in furthering its objectives.

The Act requires all relevant employers to prepare and implement a three year action plan that proactively aims to eliminate employment barriers for certain groups, setting out objectives, and numerical goals for increasing the representation of these groups in each area and level of employment. Finally, they must set out an internal procedure to monitor and evaluate the affirmative action plan. Affirmative action reports are reviewed by a review officer and approved by the Commission.

This Act was amended in 2007 to provide for additional powers of the Employment Equity Commission, such as to extend power to people employed by the Ministry, as well as the appointment of more than one review officer for a report.

3.3. The Social Security Act No. 34 of 1994

The social security system of Namibia is an essential part of the government's efforts to promote the welfare of its people. This Act covers funds and payments of benefits such as those related to maternity leave, sick leave, and establishes the Death Benefit Fund, National Medical Benefit Fund, National Pension Fund, and the Development Fund. The latter is concerned with catering for the socio-economically disadvantaged, and students enrolled in institutions of higher learning, conducting training and employment schemes, granting of bursaries, loans and other forms of financial aid.

3.4. The Employment Service Act No. 8 of 2011

This Act was set in motion to support the National Employment Service by imposing certain obligations on various employers and institutions, and regulate private employment agencies.

Within this Act, new provisions for certain employers were set out to report to the bureau any vacancies (temporary or permanent) of new positions that arise within its establishment, within a specific time period. This also applies to the operations of new employment establishments. The bureau intends to identify suitably qualified registered job seekers to the prospective employer. The employer must then consider these candidates in good faith and notify the agency whether they employed the job-seeker. It is a serious offence to fail to comply with the terms set out and may result in a significant fine or up to two years imprisonment.

Restrictions have been set against private employment agencies to reduce discrimination, including on the grounds of race, sex, religion, disability, HIV/AIDS status, or previous, current or future pregnancy.

The Act also gives large powers to employment officers, including the right to enter and inspect any place of employment or a private employment agency and other powers conferred upon a labour inspector.

3.5. The Public Service Act No. 13 of 1995

The Public Service Act provides for the establishment, management and efficiency of the Public Service, the regulation of employment, conditions of service, discipline, retirement and discharge of staff members in the Public Service, and other incidental matters.

3.6. The Employees Compensation Amendment Act No. 5 of 1995

This replaces the Workmen's Compensation Act 1941, as to adjust provisions in accordance with the independence of Namibia. This Act covers a wide range of provisions including the removal of certain outdated discriminatory provisions, and empowers the Commission with more responsibilities, duties and functions.

3.7. The Pension Funds Amendment Act No. 5 of 2011

The original Act was to provide for all matters concerning registration, incorporation, regulation and dissolution of pension funds. This Act has recently been amended to empower the Minister to make regulations prescribing the minimum or maximum amount which a pension fund may invest in or outside Namibia. In addition, it prescribes a framework for the investment of pension fund assets in unlisted investments, authorising the registrar to grant conditional exemption from certain provisions. Finally, it gives powers to administer penalties for contravention or failure to comply with certain regulations.

3.8. The Pension Matters of Government Institutions Amendment Act No. 5 of 1990

This Act removes the right of persons to invest their accrued pension benefits in the retirement annuity funds of life insurance companies.

4. Labour Administration: Findings and Recommendations

4.1. Labour Administration System in Namibia

According to the ILO Labour Administration Convention R. 150, the term labour administration system means all public administration bodies responsible for and/or engaged in labour administration (whether they are ministerial departments or public agencies, including parastatal, regional, or local agencies), any institutional framework for the coordination of the activities of such bodies, and for consultation with and participation by employers and workers and their organizations.

In Namibia the core institution of the labour administration system is the Ministry of Labour and Social Welfare (hereinafter referred to as the Ministry) with a mandate covering areas of labour, employment and social welfare (see 4.2.). However, as it is the case in most countries in the world, other policy areas closely related to labour administration are covered by other authorities, such as vocational training (by the Ministry of Education), gender equality (by the Ministry of Gender Equality and Child Welfare), social services (by the Ministry of Health and Social Services), access to the local labour market (by the Ministry of Home Affairs and Immigration), among others. As discussed further in this Memorandum, the Ministry has a mandate to provide employment services, but the general responsibility for the employment strategy rests with the National Planning Commission.

Part of the labour administration system in Namibia is also the responsibility of statutory bodies under the purview of the Ministry (and responsible directly to the Minister), such as the Office of the Labour Commissioner (Labour Act, 2007, Part E),

Office of the Equal Treatment Commissioner (Affirmative Action Employment Act, 1998, Part 1) or the Social Security Commission (Social Security Act, 1994, Part II). The Labour Advisory Council, created under the Labour Act, 1992 (section 7) and continued by the Labour Act, 2007 (Chapter 9), is a tripartite advisory body attached to the Minister, advising him on matters such as collective bargaining, national policy on employment conditions and occupational safety and health, labour legislation, unemployment, the ILO affairs, among others.

In order to be effective, any labour administration system needs to collaborate with other government agencies and public and private institutions that carry out similar activities. There is an increasing tendency in all regions to conclude agreements to that end and to improve the basis for formal collaboration. For example, collaboration exists among labour inspectorates, employment offices, tax authorities, social security bodies and the police. In certain systems, formal collaboration agreements are required, while in others less formal requirements are met and the inter-ministerial collaboration works at the level of high officials without any formal memorandum of understanding.

Recommendations

To review the needs of inter-ministerial cooperation in fields related to the Ministry's mandate. To this extent, consider the signing of Memorandum of Understanding covering specified areas of mutual interest and/or create joint working groups and/or organize regular consultations with selected partner ministries. The Ministry of Labour and Social Welfare should play a stronger role in coordinating issues related to labour policy. More specifically, it should play a stronger role in coordination and implementation of policies focused on creation of decent job opportunities. The Ministry should consider elaboration and adoption by the Government of the National Labour Policy.

4.2. Ministry of Labour and Social Welfare

4.2.1. Mandate, Vision and Mission

The mandate of the ministry, as reflected in the Strategic Plan 2011-2016 is "To provide labour, employment and social welfare services as per the Constitution of the Republic of Namibia".

It is useful to reiterate that the Constitution of the Republic of Namibia contains provisions on promotion of the welfare policy in Article 95 of Chapter 11. Some of these constitutional provisions directly relate to the Ministry's mandate, especially those in the field of equal treatment, and they include, protection of workers, promotion of industrial relations, ILO affairs, protection of senior citizens, protection of the unemployed and the incapacitated, and adequate wages.

The vision of the Ministry consists of "a productive nation with its workforce, enjoying harmonious labour relations, decent work, full employment and social welfare." Its mission is "to ensure effective labour, employment, and social welfare services".

While labour relations, decent work and social welfare do not pose a particular problem and are clearly in the Ministry's mandate (as is the case in many other countries), the responsibility in the field of employment deserves special attention.

Employment policy is an area, which, among key functions usually attributes to labour administration, is the most complicated one, both from the point of view of its content and institutional framework. The obvious relationship between employment and over-all economic and social policies suggests that addressing employment requires

concerted action in many fields that lie outside the exclusive competence of any particular labour administration organ, such as the ministry of labour. Parallel action has to be taken in fields such as education, fiscal, monetary and customs policy, industrial development, foreign trade, among others. In other terms, while the labour ministry often has the official mandate and necessary tools in the field of active and passive labour market policies, employment objectives must be achieved through cooperative efforts of the whole government⁴. This approach is also reflected in the ILO Employment Policy Convention, 1964 (No. 122), however not ratified by Namibia, which requires Member States to “declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment”.

As highlighted in the 2010 State of the Nation address by His Excellency Hifikepunye Pohamba, President of the Republic of Namibia, “the issue of unemployment requires focused and multi-sectoral attention of all stakeholders”. Naturally, such a major goal means a policy that must be broad-based and must represent not just one of the routine tasks of one single ministry, but a strategic objective underpinned by the government as a whole.

According to the National Planning Commission Act of 1994, the Commission is responsible, among many other policy areas, for “macroeconomic policy analysis, national and sectoral development planning and employment strategies, budgeting, and project analysis.”

National Planning Commission, which, according to the Constitution has a strategic mandate (its task is “to plan the priorities and direction of national development”, Constitution, Chapter 17, Art. 129), cannot replace the role of a designated ministry that is, or should be, in charge of development of concrete policies, their implementation and their evaluation. In fact, the employment mandate in the past was with different government departments (for example with the Ministry of the Education and Employment) and such should be a situation also now. It should be noted, that according to the National Planning Commission Act, the Minister of Labour and Social Welfare is not a member of the Commission, compared to Ministers of Agriculture, Finance, Works and Regional and Local Government.

However, several interviewees turned the attention of the Mission to the fact that there is an ambiguity about the mandate for employment matters among the governmental departments, and while the strategic authority in the field of employment is currently given to the National Planning Commission, this body does not have technical capacity to carry out this role. Some of the interviewees also raised the issue of the recent Commission’s initiative – the “Targeted Intervention Program for Employment and Economic Growth” (TIPEEG) – a specialized short-term program aimed at focusing on selected economic sectors and public works. The prevailing opinion is that while such a program can create

⁴ During the period following the WWII, labour ministries’ role in the field of employment was – at least nominally – dramatically extended. The labour administration, which originally was concerned with only the organization of placement services and with providing supplementary vocational training, has been more and more involved in (and often in charge of) overall government policies addressing general level of employment. This new function has often been emphasized in the very title of ministries dealing with labour issues, with “employment” among their main denominations. This extension of the mandate of labour (and “employment”) ministries has not been without controversies and the actual organization of employment agenda of governments has been subject to many experiments, for example in France or in Germany, where the mandate for employment matters was temporarily given to the ministries of economy. Both countries, however, returned to the original pattern and employment issues were returned to the ministries of labour. The key problem was how to reconcile employment, as a major social goal, with other economic objectives, and, consequently, how to divide government responsibilities among its departments.

some job opportunities, they will probably not be sustainable as it is focused mainly on temporary economic activities in the developing infrastructure, but it does not address the underlying reasons of high unemployment (such as lack of investment or inadequate situation in education and vocational training). Moreover, according to one of the interviewees, social partners were not given any feedback about this program. Several interviewees were in favour of the Ministry playing a key role in coordinating the government's efforts to combat unemployment, as is the case in many other countries where ministries of labour are often in charge of employment issues, and are closely working on them together with a cluster of other "economic" ministries. Elaboration and implementation of employment policies also require close collaboration with social partners and the Ministry is well placed to implement this role thanks to its mandate in the field of labour relations and its responsibility for the Labour Advisory Council. It is important to note that the Labour Act envisaged such a role by giving the Labour Advisory Council the power to investigate and advise the Minister, among other things, on "the prevention and reduction of unemployment" (Art. 93, c).

On the other hand, the Ministry could take over full responsibility for employment policy development, only under the condition that its institutional capacities are significantly strengthened in terms of the quality and quantity of its staff (especially to strengthen its analytical capacity) and budget not only for running of public employment services, but especially for active labour market programmes. Unless it is done, services offered by the Ministry to job-seekers will be limited to help in finding jobs and on vocational counselling, which has only very limited macroeconomic impact.

Furthermore, despite the very high levels of unemployment, Namibia suffers from lack of qualified workers, and there is apparently a big mismatch between the outputs of the educational system and the needs of economy. In many countries of the world, labour ministries have at least partial responsibility for vocational training programmes or at least for retraining of job-seekers.

Recommendation

The role of the Ministry in promotion of employment should be increased and the Ministry should be better equipped to deal with this task. It is therefore recommended to submit a comprehensive document to the Government, suggesting organizational measures necessary to elaborate and implement national employment policy underpinned by appropriate institutional arrangements at the government level.

4.2.2. Internal Organization: general comments

The ILO promotes no single model or specific form of organization since ministries and/or related agencies take many forms according to the specific historical, cultural, social and economic realities of their context. They should all, however, cover the main functions or fields of activity of labour administration and, above all, their component elements should be properly coordinated. The effectiveness of a system of labour administration depends on a well-organized framework. The separate sections or departments usually created within the labour administration system to serve each functional area, must be organized in a way that is conducive to overall cohesion and effectiveness. The structure of the labour administration system should serve the functions of the system.

In general, it can be said that a typical labour ministry may have the following technical departments to serve the corresponding functional areas:

- labour relations;

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- employment;
 - labour inspection;
 - working conditions and terms of employment;
 - vocational training;
 - social security.

Apart from technical departments, ministries of labour usually also include general administrative services for managing the ministry's human, material and financial resources. This includes staff recruitment and training as well as managing internal financial resources, and the management support services, including legal, advisory, international relations, research and statistics, planning and communication services.

The Ministry's approved structure comprises of the Office of the Minister and his Deputy, Office of the Permanent Secretary (PS) and eight organizational units:

- Office of the Labour Commissioner;
- Office of the Employment Equity Commissioner;
- Directorate of Labour Services;
- Directorate of Labour Market Services;
- Division for International Relations and Advice;
- Division for Social Welfare;
- Division for General Services;
- Section of Internal Audit.

These eight organizational units are under the responsibility of senior managers with different titles: Commissioners (Undersecretaries), Directors and Deputy-Directors. As a result, three Deputy-Directors (International Relations, Social Welfare, General Services) are subordinated directly to the PS, while other deputy directors are subordinated to their respective chiefs, Commissioners or Directors. Ideally, all senior officials directly reporting to the PS should have the same grade. For the Mission, however, it was difficult to ascertain whether these differences in grades create a real problem to the functioning of the Ministry's management.

While units of the Ministry cover most functions of the Ministry's mandate, the repartition of functions creates some difficulties as it does not fully reflect the necessity to streamline the key functions of the labour administration (labour, employment, industrial relations, social protection). The combination of some functions does not seem very logical and it seems to be more a result of several partial reorganizations, than of a systematic approach.

The key issues the mission would like to raise are the following:

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- The function of the Labour Commissioner, as it is conceived now, is largely focused only on dispute settlement⁵, while other labour related issues (labour legislation, industrial relations) are with other units or are not covered at all;
 - Industrial relations matters, one of the Ministry's key mandates and the essential role of labour administration in most countries, are not supported by any dedicated unit;
 - The labour legislation function, another key function of any labour administration system, is not reflected in the Ministry's structure and the Ministry does not have any capacity to deal with it;
 - The internal structure of certain organizational units does not correspond to their declared function. This issue is however discussed under the corresponding heading;
 - The Labour Commissioner and Employment Equity Commissioner, while representing two important areas of the Ministry's agenda, do not report to the Permanent Secretary;
 - Technical units are under the responsibility of senior functionaries with different grades (Commissioners, Directors, and Deputy-Directors);
 - It seems that the Ministry suffers from exaggerated compartmentalization between its departments, especially in the field offices. This lack of coordination between units reflects the inefficient utilisation of scarce resources and the separation between policies based on different legal foundations.

Recommendation

To review the organizational structure of the Ministry in order to systematically structure the key mandates of the Ministry (labour, employment, industrial relations, social protection). Special attention should be given to areas of industrial relations and labour legislation. In a medium term, creation of an agency responsible for dispute settlement should be envisaged. Inter-departmental cooperation should be promoted both at the Head Office and in the field, in the interest of coherent policies and efficient delivery of services to the population.

4.2.3. Key functions of the Ministry

Dispute Resolution

Since November 2008, the system of alternative dispute resolution (ADR) has been managed by the Office of the Labour Commissioner which was created under Section 120 of the Labour Act No. 11 of 2007, hereinafter referred to as the Labour Act. This was a welcome development, which simplified the system and was an improvement on the previous system which was legalistic and centred on the District Labour Courts. The functions of the Labour Commissioner include:

⁵ It is a current practice in other countries in the region, but also outside of Africa, that the running of the dispute settlement systems is done by autonomous or semi-autonomous agencies, while the Ministry keeps its role of mediation in industrial conflicts of national dimensions and – more generally – regulation of industrial relations.

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- a) registering disputes from employees and employers over the contravention, application, interpretation and enforcement of the Labour Act and taking appropriate action;
 - b) attempting through conciliation or giving advice, to prevent disputes from arising;
 - c) attempting through conciliation to resolve disputes referred to the Labour Commissioner in terms of the Labour Act or any other law; and
 - d) arbitrating labour disputes that have been referred to the Labour Commissioner if such disputes remain unresolved after conciliation.

In the discharge of the above duties, the Labour Commissioner is assisted by a pool of conciliators and arbitrators⁶ and is guided by the Rules relating to the Conduct of Conciliation and Arbitration before the Labour Commissioner, 2008 (Rule No. 262). The Rules, inter alia, provide for serving and filing of documents, the conduct of conciliation and arbitration proceedings and other procedural matters such as appearance before conciliation and arbitration proceedings, representation of the parties, postponements, and enforcement of arbitration awards and their review by and/or appeal to the Labour Court. The Office of the Labour Commissioner has 15 offices throughout the five administrative Regions of the country with a total staff compliment of 81. However, only 44 of these positions have been filled with a vacancy factor of close to 50 per cent.⁷ There are 30 conciliators/arbitrators, including the Labour Commissioner and Deputy Labour Commissioner. Despite this high rate of vacancies, the Labour Commissioner has been able to conclude either conciliation or arbitration processes within the statutory time limits, which are within 30 days of receipt of a dispute. According to Labour Commissioner's Annual Report 2008-10, the Office has received a total number of 2,444 disputes during the period under review, of which 1,615 were successfully resolved, thus showing a settlement rate of 66 per cent.⁸

Section 100 of the Labour Act establishes a tripartite Committee for Dispute Prevention and Resolution (CDPR) with the function to, amongst others, recommend policies and guidelines on dispute prevention and resolution for application by the Labour Commissioner, and review the performance of dispute prevention and resolution by the Labour Commissioner and report to the Labour Advisory Council (LAC). However, despite this legislative framework, the mission was able to come across the following findings:

Shortage of staff

Despite the presence of the Office in all the Regions throughout the country, shortage of staff was seen as a major element in the way of effectiveness. Due to the geographical size of the country, conciliators and arbitrators have to cover large areas when delivering their services.

⁶ Conciliators and arbitrators are appointed by the Minister in terms of Sections 82 and 85 of the Labour Act, respectively, subject to the laws governing the public service.

⁷ Interview with the Labour Commissioner during the mission.

⁸ This performance is within sub-regional average when comparing with neighbouring countries. For example, according to the Annual Reports for 2010 /11 of the various dispute resolution agencies, the settlement rate of the Commission for Conciliation, Mediation and Arbitration of South Africa was 69 per cent; the Conciliation, Mediation, Arbitration Commission of Swaziland was 60 per cent; the Directorate of Dispute Prevention and Resolution of Lesotho was 73.4 per cent; and the Commission for Conciliation and Arbitration of Tanzania was 73 per cent.

Recommendation

The Mission was duly informed of the effort currently underway by the Ministry to fill vacant posts. The Mission would therefore recommend that this process be expedited, and that efforts be made to properly induct newly recruited candidates into their jobs.

Capacity of conciliators and arbitrators

In preparation for the institutionalization of the ADR system into the country, the ILO, in collaboration with the University of Namibia, provided technical assistance and support in the form of training to conciliators and arbitrators. Due to the demand in the labour market, there has been a high turn-over of staff to join the private sector, leaving the system with staff with limited conciliation and arbitration skills. The Mission was particularly informed about limited skills in the writing of arbitration awards by some arbitrators resulting in appeals, reviews and protracted litigation in the Labour Court. The Mission however took note of the efforts made by conciliators and arbitrators to advance their academic qualifications.⁹

Recommendation

It is recommended that conciliators and arbitrators take advantage of courses given by the International Training Centre of the ILO, Turin and other institutions in the region to address this capacity need. It may also be desirable for the Government to discuss the possibility of continuing to offer specialized courses on conciliation and arbitration with the University of Namibia and other duly accredited training institutions in the country.

Oversight role by the committee for dispute prevention and resolution

The Committee has not been performing its oversight role effectively. The mission was informed that the last time that the Labour Commissioner's reports were discussed was about 18 months ago. This has therefore denied the users of the service, who are primarily the social partners, an opportunity to play their statutory oversight role and make recommendations on the strengthening of the system to the LAC.¹⁰

Recommendation

The Mission was informed that a new Labour Advisory Council has recently been set up. It is therefore recommended that steps be taken to strengthen the capacity of the Committee for Dispute Prevention and Resolution for it to discharge its mandate as provided for in the law.

Enforcement of awards

The Mission was informed of an increasing trend of parties to arbitration proceedings to fail to honour arbitration awards¹¹ and to use the provisions of Section 89 of the Labour Act to approach the Labour Court for appeal against or review of arbitration awards. This avenue has resulted in a prejudice to the party in whose favour the award has been made in

⁹ See the Office of the Labour Commissioner Annual Report, 2008 -10 in which 15 conciliators and arbitrators were pursuing specialized and higher education.

¹⁰ Similar legal tripartite structures exist in the region and have been helpful in enhancing stakeholder participation in the operational strengthening and better management of the alternative dispute resolution system. These are the Industrial Relations Council of Lesotho, the Governing Body of the CCMA of South Africa and the Governing Body of CMAC of Swaziland.

¹¹ According to the Office of the Labour Commissioner Annual Report, 2008-10, 421 disputes were referred to arbitration, and the Office recorded 101 notices of appeals and reviews.

that enforcement of the award would be stayed until the conclusion of the appeal and review process in the Labour Court, which takes a considerable period of time. Furthermore, the system is further made complicated by the provision of Section 90 of the Labour Act which allows an aggrieved party to apply to a labour inspector to enforce the award. Given the shortage of staff and overloading of work for labour inspectors, this function has not only added an extra work, but has the effect of compromising the neutrality of labour inspectors which has been encouraged by the ILO Labour Inspection Convention, 1947 (No. 81).

Recommendations

- a) The system of enforcement of awards needs to be reviewed. In specific terms, Section 89 of the Labour Act, which allows for an appeal against an arbitration award needs scrutiny. The general trend in the region is only to allow reviews, and not appeals, of arbitration awards on very narrow grounds. This has been successful to forestall any possible abuse of the process and to bring quick finality to the dispute.
- b) The enforcement of arbitration awards should not be the responsibility of labour inspectors since this is not in line with Labour Inspection Convention, 1947 (No. 81) which discourages labour inspectors from engaging in any other activity which may compromise their neutrality. Enforcement of arbitration awards should be left to the parties themselves, and this is the trend in this region.

Representation of the parties during conciliation and arbitration proceedings

The Mission was informed about the “abuse” of the system by labour consultants, pressure groups and legal practitioners who insist on representing parties in conciliation and arbitration proceedings. While representation is permissible under the circumstances stipulated in Sections 82 (13) and 86 (13), a concern has been raised that the presence of these parties has not assisted in the effective resolution of disputes, but rather they have caused unnecessary delays.

Recommendation

The Office of the Labour Commissioner to place more emphasis on building the capacity of leadership of trade unions and employers’ organizations on representation skills to enable them to effectively represent their members in conciliation and arbitration proceedings. This may possibly have the effect of excluding labour consultants and pressure groups from the system. Furthermore, there may be a need to look into the effects of Section 82 (13) which allows legal presentation in conciliation proceedings. The general trend in the region is to allow such representation in arbitration proceedings only.

Dispute Prevention Strategy

According to Section 121 (3) of the Labour Act, the Labour Commissioner may provide registered employers’ organizations and registered trade unions with advice and training relating to designing and establishing of procedures for the prevention and resolution of disputes. Furthermore, Section 100 (a) (ii) of the Labour Act provides for the development of policies and guidelines on dispute prevention for application by the Labour Commissioner and the users of the Labour Commissioner’s services as one of the functions of the Committee for the Dispute Prevention and Resolution. The Mission has noted the absence of policies and guidelines of dispute prevention by the Committee on Dispute Prevention and Resolution, neither has the Office of the Labour Commissioner developed any programmes to this effect. The Mission would like to emphasize the usefulness and importance of dispute prevention such as training and advice to the social partners, which reduces the volume of disputes and promotes harmonious labour relations.

Recommendation

The Committee for Dispute Prevention and Resolution to design a policy and guidelines on dispute prevention for approval by the Labour Advisory Council as mandated by the Labour Act so as to provide a framework within which the Office of Labour Commissioner will operate. The guidelines can include information booklets on effective ways for prevention of disputes, education and training manuals, awareness raising programmes, problem solving services and interventions at the workplace.

Autonomy of the Office of the Labour Commissioner

During the Mission, nothing created an impression implying lack of operational autonomy by the Office of the Labour Commissioner in the discharge of its functions and duties. However, there was a feeling from the social partners that it may be desirable for the Office to be given more autonomy and be a stand-alone agency since this is a trend in the region. The Mission is cognisant of the problems associated with creating new structures from a cost point of view and the management problems that autonomous structures bring if not properly addressed.

Recommendation

The Mission has no firm opinion on whether the Office of the Labour Commissioner should be an autonomous agency or not. However, the Mission recommends more consultations at the national level on this matter in the future and the option of creation of a separate agency, should therefore, be seriously considered. It may also be helpful to undertake an analysis of the performance of similar institutions in the region and assess what would be best for Namibia.

Labour Inspection

Labour inspections fall under the Directorate of Labour Services, which has a Division of Labour Inspectorate for general working conditions and the Division for Occupational Health and Safety. Part F of the Labour Act establishes a legal framework for labour inspection by providing for the appointment of labour inspectors and their powers to enforce the Labour Act, including powers to inspect, issue compliance orders, enforce arbitration awards and deal with individual complaints. However, a concern was raised on the ineffectiveness of the enforcement powers of the inspectorate in that they have no powers to impose fines, neither do they have the power to stop operations of a company if the process undertaken therein is likely to result in injury or danger to the employees.

The ILO technical mission on the assessment of labour inspection system in Namibia (2005) recommended the integration of the system of labour inspection for better monitoring of compliance and efficient use for scarce resources. Efforts in this direction, were indeed made, which included the development and use of a single inspection form for both general conditions of work and occupational safety and health inspections. However, the Mission observed that currently, the system operates independently without collaboration and uses two different forms. Despite the sharing of offices at both the Headquarters and in the Field, there was no evidence of coordination and cooperation between the two inspection Divisions, and with other inspection agencies such as mining, marine and health services.

There is annual plan for labour inspection that is drawn at the beginning of each year, which is used for target setting and as a measure of performance. Each region is expected to conduct 400 inspections per year. Furthermore, performance is assessed on the number of complaints received and settled.

There was uncertainty on the accuracy of the information contained in the establishment register, which is normally a useful tool in the planning of inspection and monitoring of the extent of compliance. This problem could have easily been resolved through collaboration between the inspectorate and institutions such as the Employment Equity Commission, the Social Security Commission and the Ministry of Trade.

The staff compliment of the general labour inspectorate was reportedly 77 positions, with 30 vacant positions and in the process of being filled. Labour inspectors are found in all Labour offices throughout the country. The staff shortage was viewed as an impediment in the ability of inspectors to effectively discharge their duties given the vast geographical size of the country. Moreover, according to the Annual Report of the Labour Inspectorate Division (2010-11), labour inspectors throughout the country were inundated with settlement of individual complaints, thus giving them limited chance to undertake inspections, and thus were unable to achieve the set inspection targets.

With respect to qualification, most general labour inspectors did not have a professional qualification, and the need for their training and proper induction was expressed by many stakeholders interviewed. A concern was also raised of the low salary for labour inspectors compared to inspectors in other ministries, thus making it difficult to attract staff of the requisite calibre. The Mission was provided with job descriptions and salary scales for inspectors from other Ministries (Mines/Petroleum Affairs, Tourism, Fisheries, and Health). It was observed that requisite qualifications varied from ministry to ministry. Whereas the minimum entry requirements for labour inspectors is Grade 10 Certificate or its equivalent, the entry requirements for other inspectors ranged from a minimum of Grade 12 Certificate or its equivalent in Fisheries and Bachelor's Degree in Mines/Petroleum Affairs. Perhaps these differences in qualification requirements can explain the disparity in salaries. The Mission would however like to recall the provisions of Convention No. 81, which provides that labour inspectors should be adequately qualified and trained for the effective performance of their duties.

Resource constraints were also raised as a concern. While the Mission would like to commend the Ministry on the state of office facilities, including computers and telephones, complaints were raised on limited facilities that facilitate labour inspectors' performance outside the office. These include limited number of vehicles, centralized system of vehicle control, and the use of personal mobile phones by inspectors.

Lack of supervision and constant feedback from the Headquarters was raised as a concern. There was generally limited involvement of field staff in the determination of the Division's plans; no consultation and joint evaluation on the performance and achievements made; and no feedback from the Headquarters on the reports submitted. This has resulted in a feeling of alienation and neglect by the Field staff.

Occupational Safety and Health

The total number of positions for the Occupational Safety and Health Division is 25 officers, but only 12 positions have been filled. Unlike the general inspectorate which has offices throughout the country, OSH officials are found only in three regional offices and provide specialized services upon request by the labour inspectorate in other offices. In addition to the Labour Act, the OSH Division is responsible for the administration of the Regulations on the Health and Safety of Employees at Work, 1997. The Regulations give the Ministry of Labour the power of being an umbrella organ on all matters relating to occupational safety and health. However, the implementation of the Regulations is equally vested in the Ministry of Labour, of Health and Social Services and of Mines and Energy. This has resulted in a fragmented system and lack of collaboration and coordination between the three ministries. The main functions of this Directorate include approval of building plans, workplace registration, machinery registration, accident investigation, providing information to stakeholders, workplace inspections, and machinery Inspections.

Like the general inspectorate, there is a challenge of recruiting high calibre personnel who are inclined to work in the private sector where conditions of service are more lucrative. The Division therefore relies on the expertise of the private companies to undertake inspections in specialized services such as lifts, and the Mission was not clear as to what mechanisms were in place to ensure quality control on the work done by private companies.

During the interviews, the Mission was informed that the Government was considering ratifying Labour Inspection Convention, 1947 (No. 81), but was cautious not to hastily ratify without the requisite framework to ensure implementation and compliance with the provisions of the Convention.

Recommendation

- a) Following the recommendations of the ILO technical mission in 2005 to integrate both general and occupational labour inspections, the Mission once again recommends a closer collaboration between the two inspectorates;
- b) The Regulations on the Health and Safety of Employees at Work, 1997 be reviewed to better streamline and consolidate responsibility on occupational safety and health under one authority;
- c) The filling of vacant positions to be expedited to improve service provision in the field;
- d) The Ministry is encouraged to have regular retreats with field staff to boost their morale and enhance their integration into the Ministry. In future, the Ministry may adopt a human resources policy which encourages rotation of staff; and
- e) The Ministry is encouraged to take advantage of ILO technical assistance to Namibia and request ILO to undertake an analysis of the national law, policy and practice in relation to labour inspection with a view to identifying any gaps regarding conformity with the provisions of Convention No. 81.

Industrial Relations and Social Dialogue

One of the most important missions of the labour ministries is to promote industrial harmony and dialogue between social partners. Many labour ministries have set up industrial relations units to promote sound labour management relations, strengthen competitive advantage both in the public and private sectors, through partnership, enhance labour management cooperation, and the provision of dispute resolution facilities.

Large-scale changes caused by globalization are making industrial relations more important for labour administration. Globalization is changing the conditions in which trade unions and employers' organizations operate. New challenges, such as the development of new forms of employment relationships, the spread of part-time and temporary employees, or the changes in industrial processes and forms of production, have also changed the face of industrial relations. Moreover, recent economic and financial crisis put many enterprises under severe pressure in which many cases resulted in retrenchments or wage cuts, thus contributing to increased tensions between the two sides of industry. National labour administrations are consequently obliged to analyse these changes and adapt their policies in order to maintain social peace.

While achievement of “harmonious labour relations” is part of the Ministry’s vision, this objective is not reflected by the Ministry’s structure. The several key functions, this part of labour administration is usually supposed to implement, are not supported by

sufficient qualitative human resources and necessary expertise¹². The functions that the Ministry should implement in this field could be summarized under the following areas:

- Promotion of tripartism and support to tripartite bodies;
- Dispute prevention and resolution;
- Promotion of collective bargaining;
- Creating legislative framework of industrial relations;
- Provision of technical services, advice and training to employers' and workers' organizations.

It is evident that these functions of the Ministry are dispersed among various units, and some of them are not implemented at all. The main focus of the Ministry in this field is on conciliation, mediation and arbitration, which belong to the Office of the Labour Commissioner. Apart from labour disputes, the Labour Commissioner is also supposed to register trade union and employers' organizations (which is a rather marginal role taking into account that in 2009/10 only one trade union organization was registered), and manage and monitor industrial action. However, it seems, that dispute settlement is an activity that is largely prevailing in the Labour Commissioner Office, while other activities are rather marginal.

Other industrial relations issues are dealt with by the Division of International Relations and Advice, which also acts as a secretariat to the Labour Advisory Council.

Based on interviews and on available documentation, the Mission can observe that the Ministry lacks a systematic approach to industrial relations. Firstly; it is not clear as to what are the objectives that the Ministry wants to achieve in this field. Secondly; the relevant part of the Strategic Plan (Objective No. 3, Improve tripartite dialogue and stakeholder consultation) is rather vague and does not deal with indicators concerning issues such as collective bargaining (for example in terms of the number of collective bargaining agreements or the number of workers covered), or services provided to social partners (for example data necessary for collective bargaining, training on issues relevant to Ministry's mandate, etc.). An important function of an industrial relations department is to provide timely information to stakeholders regarding the content of labour laws, terms and conditions of employment, and collective agreements; these activities are not reflected in the current set-up. Thirdly; analysis of industrial relations and its quantitative and qualitative achievements is missing. The Ministry does not have the capacity to analyse the content of collective bargaining agreements and to disseminate it to use it in defining its policies or to provide this information to social partners. Fourthly; several interviewees raised the issue of functioning of the Labour Advisory Council and of its secretariat which should be reviewed.

¹² Convention No. 150 contains provisions on industrial relations, which are supplemented in detail by Recommendation No. 158. According to both the Convention and the Recommendation, one of the main functions of government departments entrusted with industrial relations functions is to promote tripartism and social dialogue. Convention No. 150 also states that such a department or agency must promote effective consultation and cooperation between public authorities and employers' and workers' organizations, and must also provide technical advice. Recommendation No. 158 encourages the promotion of sound labour relations and goes on to list various means of achieving this goal, namely: respect for freedom of association and the right to organize and bargain collectively; the availability of consultation services and voluntary negotiation machinery; and the existence of conciliation and mediation machinery.

Recommendations

After consultation with representative social partners' organizations, to formulate the Ministry's policy in the field on industrial relations, based on requirements of the Labour Act, but also on the needs of employers and workers. To envisage the creation of a specific directorate or division to deal with industrial relations issues.

The main structure of social dialogue is the Labour Advisory Council (LAC,) which has been established in terms of Section 92 of the Labour Act. The functions of the LAC include investigating and advising the Minister on the following matters:

- a) collective bargaining;
- b) national policy in respect of basic conditions of employment and health, safety and welfare at work;
- c) the prevention and reduction of unemployment;
- d) issues arising from the International Labour Organization or any other international or regional association of states of which Namibia is a member;
- e) legislation concerning labour matters;
- f) codes of good practice and guidelines;
- g) collection and compilation of information and statistics relating to the administration of the Labour Act;
- h) the designation of essential services;
- i) rules for the conduct of conciliation and arbitration;
- j) policies and guidelines on dispute prevention and resolution for application by the Labour Commissioner and the users of the Labour Commissioner's services;
- k) the performance of dispute prevention and resolution by the Labour Commissioner and any other activities of the Labour Commissioner;
- l) the code of ethics, the qualifications and appointments of conciliators and arbitrators in terms of Sections 82 and 85 of the Labour Act; and
- m) nominate members of the panels appointed by the Minister to prevent or resolve disputes in the national interest in terms of Section 80 of the Labour Act.

The LAC is composed of a chairperson and 12 other members (four representatives each representing the interests of the State, registered trade unions and employers' organizations, respectively), and the tenure of office for its members is three years. Section 97 of the Labour Act establishes the Committee for Dispute Prevention and Resolution, and Essential Services Committee as standing committees of the LAC. The LAC may make rules for the conduct of its meetings; while the Permanent Secretary is required to make staff members of the Ministry available to perform administrative and clerical work for the LAC in the performance of its functions.

During interviews with the stakeholders, the constitution of a new LAC was a welcome development, and there was a general feeling that the new LAC would perform better than the previous one. However, concerns about the effectiveness of the LAC were brought to the attention of the Mission. These included the general lack of capacity of

persons appointed to the LAC and their inability to properly advise the Minister; the mandate of the LAC is limited to advice on labour and employment issues. A desire was expressed to turn the structure into a negotiating body and expand its mandate to include social and economic policies. The LAC Sub-committees have been generally non-functional thereby not being able to discharge their functions as stipulated in the law; the membership of the LAC is narrowly tripartite, thus leaving out other key stakeholders such as informal economy operators; the secretariat to the LAC lacked the necessary research capacity to assist the LAC and enrich its debates; and there was a general limited financial support for the activities of the LAC.

The ILO does not advocate for a particular model of social dialogue. The ILO Tripartite Consultation Convention, 1976 (No. 144) enjoins state parties to the Convention to undertake to operate a procedure which ensures effective consultations between representatives of government, employers and workers; and the nature and form of the procedures shall be determined in each country in accordance with national practice and in consultation with the most representatives employers' and workers' organizations.

Recommendations

- a) Government to initiate consultations with representative employers' and workers' organizations on the model of social dialogue appropriate for Namibia. In order to enrich these consultations, it is recommended that the tripartite partners familiarize themselves with the various social dialogue models in the region and elsewhere and assess their effectiveness. This will enable the tripartite partners to determine the mandate and composition of a suitable model for the country;
- b) Secondly, the technical capacity of the LAC and its sub-committee should be built to strengthen their role. Furthermore, bench marking with similar institutions in the region (Essential Services Committees of South Africa and Swaziland, and the governing bodies of dispute prevention and resolution agencies in Lesotho, Swaziland and South Africa) and in other regions will be helpful;
- c) Thirdly, the research capacity of the secretariat needs to be strengthened for it to effectively provide support to the LAC. This includes assigning staff with relevant qualifications in the areas of work within the mandate of the LAC; and
- d) Fourthly, as provided for in the Labour Act, the LAC should develop rules to govern its meetings and business. The rules can include, amongst others, mechanisms for the setting of the agenda for LAC meetings and organization of its business; a system of feedback on the implementation of agreements and decisions, and the evaluation of progress made.

Employment Equity

Employment equity matters are dealt with by the Employment Equity Commission, a statutory body based on the Affirmative Action (Employment) Act, 1998. Its purpose is to achieve employment equity through elimination of employment barriers against persons in designated groups and to ensure that all categories of employment within the workforce of every relevant employer reflect the national demographic profile. To this end, the Commission inquires whether a relevant employer has adopted and is implementing an affirmative action plan, and it provides advice relevant to the Act.

The Commission is chaired by the Commissioner appointed by the Minister, with the approval of the National Assembly. Apart from the Commissioner, the Commission itself is composed of four persons representing the State and ten other persons representing different groups as defined by the Act (Article 6). As the Commission is supposed to be an autonomous body, the Commissioner reports directly to the Minister, not the PS, and

he/she is not a civil servant. The Act envisages appointment of the (administrative) Deputy Commissioner; this post is however vacant.

The scope of activities of the Commission is severely limited by the lack and quality of its staff. Thus, the Commission can only operate in Windhoek and cannot travel to verify the fact reported by enterprises (there are some 600 enterprises falling within the scope of the Act). Extension of its structures to the regions would probably be a best solution, but impossible because of budgetary restrictions on the number of civil servants.

Other major constraints are in case management system (originally from the Commission for Conciliation, Mediation and Arbitration of South Africa), which does not seem to work properly and a lack of coordination within and outside of the Ministry. However, it seems that problems are mainly related to staff issues, including selection, training and motivation.

As a result, and in spite of certain achievements and progress in certain sector (e.g. finance), the impact of the equal opportunity legislation is relatively low and the pace of change is very slow. According to the Annual Report of the EEC, 20 years after independence, 59 per cent of Executive Director positions and 43 per cent of senior management positions are still held by White Namibians, and black women are especially under-represented at higher levels of employment in virtually all industrial sectors. This situation seems to be perpetuated, as during the same year, 50 per cent of new recruits at Executive Director level were previously racially advantaged persons.

As highlighted by the Ministry's Annual Report, there is a continuous non-compliance with the Act by relevant employers in certain sectors and also the awareness of the Act's requirements is low. Chinese investments represent a specific problem.

Recommendations

- a) In the short term, to pay increased attention to the quality of staff through better training, improved recruitment procedures and better motivation. A formal cooperation with labour inspection services should be established; and
- b) In the long term, equal opportunities should be integrated with inspection of general labour and employment conditions, which would require an amendment to the Act.

Labour Legislation

For the labour administration system, labour legislation is a key tool in the governance of the labour market. Labour legislation that is adapted to the economic and social challenges of the modern world of work fulfils several crucial roles as it establishes a legal system that facilitates productive individual and collective labour relations, and hence a productive economy. By providing a framework within which employers, workers and their representatives can interact with regard to work-related issues, it serves as an important vehicle for achieving good industrial relations based on workplace cooperation. It provides a clear, constant reminder and guarantee of the fundamental principles and rights at work, which have received broad social acceptance and establishes the processes through which these principles and rights can be implemented and enforced.

In Namibia, the main pillar of labour legislation is the Labour Act, 2007, which replaced the first post-apartheid labour codification adopted in 1992. The Labour Act not only regulates employment and labour relations, but it also has a significant impact on labour administration institutions as it establishes administrative and other bodies such as the Labour Advisory Council, the Labour Court, the Wages Commission, the labour inspectorate and the Labour Commissioner.

Labour legislation is vital to the economy of any country and to the achievement of a balanced development which gives due weight to both economic efficiency and the well being of the population as a whole. This is a delicate balance to achieve and to maintain: labour legislation must thus be regularly updated and adapted to changing economic and social conditions. It is also a responsibility of labour administration to enforce it through labour inspection and through judicial system. Raising awareness of employers and workers, providing them with legal advice as well as to the public at large, running research and training in labour law related matters – all these require regular, constant attention being given to the labour law. In fact, in most countries, ministries of labour are centres of excellence of labour legislation.

The Mission considers that the Ministry should make considerable effort to enhance its role in the elaboration and implementation of labour legislation and that existing structures should be adapted to this purpose. Currently, most labour related matters are concentrated in three units: the Labour Commission, which is in charge of implementing and administering the Labour Act through mediation and conciliation procedures; the Directorate of Labour Services, which is in charge of enforcing compliance with the Labour Act; and through the Division for International Relations and Advice in charge mainly of affairs related to international labour standards.

What is totally or partially missing in the activity of the Ministry is:

- The capacity to analyse the impact of the current labour legislation and to elaborate legislative proposals addressing issues raised by social partners and the wide public;
- To provide advice to social partners, individual employers and workers, and to increase awareness of labour legislation to the wider public;
- To implement research on labour law developments abroad;
- To provide training on labour legislation matters;
- To prepare submission of legal drafts for the Office of the Attorney General.

It was explained to the Mission that the prerogative of legal drafting in Namibia belongs to the Office of the Attorney General¹³. However, nothing prevents the Ministry from submitting legal proposals to the Attorney General in a form that is close to the final legal texts. In fact, this is the repartition of roles in many countries, where line ministries (or their technical departments) are in charge of elaborating draft legal texts in their technical field, while the final texts are approved or finalized by specialized legislative units at the Prime Ministers' level (legislative councils and similar institutions).

Recommendations

To create a labour legislation unit (2 or 3 labour lawyers) in charge of the agenda mentioned above.

Labour market services

The basic purpose of Public Employment Services (PES) within the national labour administration systems, regardless of the economic climate and the state of economic development, is to facilitate the adjustment of enterprises and workers to changing labour

¹³ Since 2008, the Office of the Attorney General is separated from the Ministry of Justice.

market conditions. PES is the main governmental instrument to implement labour market programmes to mitigate redundancies and expedite re-employment for retrenched workers. PES usually operates as a component of the ministries of labour or, less often, as a separate executive agency.

PES typically fulfils this role through the provision of labour market information; job search assistance and placement services; administration of unemployment insurance benefits; and administration of a variety of labour market programmes (worker displacement assistance, retraining, and public service employment, among others)¹⁴.

In Namibia, these services are provided by the Directorate of Labour Market Services, which, according to the Ministry's Annual Report 2009/10, "exist to promote employment creation and to ensure maximum utilization of the entire workforce in order to achieve greater economic growth and satisfy people's needs and aspiration."

The Directorate, divided into divisions (namely Labour Market Information and Employment Services), is under one Director and two Deputy Directors.

The Directorate provides:

- Labour Market Information;
- Occupational and vocational guidance services;
- Registration and placement of jobseekers;
- Canvassing services to prospective employers.

In the field of Labour Market Information, research and surveys are done to keep an up to date LMI system and to provide a framework for policy making and for planning of human resources. The most important recent products were the Labour Force Survey (LFS) done in 2008, and the Occupational Wages Survey in 2009. The next LFS is planned for 2012 because of low resource capacity of the labour market information division which is comprised of subdivisions of Research and Development, Labour Statistics, and Employment Planning. The total staff compliment is 14 posts, and this number could be sufficient provided that all positions are actually filled, and filled with competent specialists.

The Division of Labour Market Information also comprises a small sub-division of Productivity Promotion with three scheduled posts of development planners. Creation of this subdivision was inspired by the SADC Productivity Declaration of 1999. It seems that the whole agenda of this unit is in its infancy and that it was created without a clear idea about the objectives to be achieved. The Mission wants to remind that the SADC Productivity Declaration 1999, while demanding creation of an institutional framework, understands by productivity "the efficiency and effectiveness with which labour, capital, materials, energy and other resources are combined and utilized..." and that it should be achieved through a wide range of matters in the economic, labour and social fields, including inclusiveness of economic systems, equitable distribution of the fruits and productivity gains, tripartism and harmonious industrial relations or gender equality and equity. It means that practically all the Ministry's activities are supposed to contribute to

¹⁴ It is important to note that employment services are supposed to provide these services to both components of the labour market - jobseekers, as clients, and enterprises, as both clients and partners.

enhancing productivity and such a notion should not be just a role of one small unit, but be embedded in the Ministry's planning and policy making and evaluation. There are several options to develop this agenda, including transformation of the unit into a semi-autonomous agency under the supervision of the Ministry, as is the case in Botswana and South Africa. However, such a solution requires a strong support (and funding) provided by stakeholders, and interest of companies.

In the field of Employment Services, the declared objectives are to provide information on labour market developments, to provide information on available human resources, to assist jobseekers to find or create employment, to provide vocational counseling and career guidance through a nationwide network of labour employment services. Employment services operate at the regional level with offices in Windhoek and in four regions (Central region, Southern region, North-Eastern region and Northern region), each of them having between 5 - 9 officers. Vocational counseling is operational in six offices, employing 1 - 2 psychologist or psychological counselors. Altogether, Employment Services represent 28 staff members, including two vacancies, while the General Staff, as it is the case also in other units, is seconded by Ministry's General Services.

According to the Ministry's Annual Report 2009/10, a total number of 7,424 job seekers were registered during the period. While 730 of them were placed, it was mostly on a temporary basis. During the same period, 410 establishments were visited with the objective of job canvassing. Orientation talks were implemented in 118 schools and 4,529 learners were given career guidance. Recently, a new system of collecting information on job seekers was introduced, creating a nation-wide database.

Vocational counseling is done using psychometric tests measuring aptitudes for occupations; councilors are also involved in the recruitment of public servants.

While both placement and counseling services are certainly useful, their national impact is very low taking into account the total number of the workforce. Placement of 730 persons does not have any significant impact on the unemployment rate, especially if jobseekers are placed in temporary jobs.

There are systemic, but also organizational reasons for this situation. Firstly, the number of officers in charge of placement is extremely low in international comparison¹⁵. The staff caseload in the EU is about 1:150, but in some middle-income countries it is significantly lower. For example in Russia there are 42 unemployed per one PES staff, or 56 in Ukraine. However, in sub-Saharan Africa it is on average 1:4000. Secondly, the number of registered unemployed workers, compared to the total number of unemployed, is also very low, as there are no incentives to register (unemployment benefit, referrals to retraining programmes, etc). Thirdly, the image of public employment services is poor, as raised with the Mission several times. Employers have doubts about trustworthiness of information given by PES, as they know that the PES function is a last resort for both employers and employees, while most placements are done by private agencies. As a result, employers find other ways to fill the vacancies, either through informal contacts or local press, or through private placement agencies. While public funds invested in PES are very low, it is very difficult to make a cost-benefit analysis and that's why the Ministry can hardly argue for more resources to be given to this policy.

The recently adopted new legislation, the Employment Service Act, 2011, providing for establishment of the National Employment Service, is creating new challenges and the Mission has doubts whether the current institutional capacities of the Ministry can cope

¹⁵ See the Annex 1

with them. Firstly, the Act introduces new reporting and other obligations to employers¹⁶. Most importantly, every designated employer must notify the Bureau of any vacancy or new position, whether temporary or non-temporary, in its employment establishment (Section 16 of the Act). Moreover, if the employer intends to fill any vacant or new position, he or she may not fill a vacancy or a new position without considering in good faith any suitably qualified job-seeker referred to him or her by the Bureau (Section 16 (5) of the Act). The Mission feels that this obligation may be difficult to comply with, especially for smaller employers, and it suggests the impact of this new legislation should be evaluated in due time. Another problem is that in commercial businesses, the names given to posts by firms are often purely nominal and the needs of the organization may diverge from any nominal occupational structure.

Another innovation introduced by the Act's relates to the licensing of private employment agencies. The Act also gives employment officers similar powers as labour inspectors, including the right to enter and inspect any place of employment or private employment agency. These obligations imposed on employers and new functions and powers conferred on public employment officers, if implemented in practice, may significantly increase the work burden of employment officers, diminish the time available for their core activity (placement) and de facto, will create a parallel labour inspection.

In this particular context the Mission would like to turn the attention of the Government to the fact that assimilating employment services with labour inspection, creates inevitably a conflict between these two very different roles. While the placement role presupposes a collaborative relationship with employers, based on trust and partnership, inspection role presupposes a hierarchical relationship. These two roles might be difficult to combine in practice, as it was proved in some other countries in the past¹⁷. In many countries, supervision of private employment agencies is the role of the labour inspection services.

In the field of employment planning and research, the main issue, the Mission would like to raise is the actual use (and usefulness) of gathered statistical information and other labour market information. The fact of having two important surveys, the Labour Force Survey and the Occupational Wages Survey, is certainly very positive in itself. However, many interviewees raised the following critical points with the mission:

- Collection of statistical data is not accompanied by an in-depth (sectoral, occupational, regional) analysis of the labour market, and especially the causes of unemployment, lack of required qualifications, among others;
- The production process (collection, cleaning and editing) is very slow, so the period between data collection and production of the report is very long. Also the period between LFS is rather long, as the last one dates back to 2008, while the next one was postponed until 2012;

¹⁶ By the WAPES' survey among 70 public employment services worldwide, only one third have legislation stipulating that employers must register any vacancy arising within their establishment to the Public Employment Service. These countries are in Europe: Belgium, Czech Republic, Finland, Hungary, Luxembourg, Montenegro, Norway, Romania, Serbia, Slovenia, Sweden; and outside Europe: Burkina Faso, Chad, Congo, Russia, South Africa, and Tunisia. Compulsory vacancy reports have proven not to be useful in Europe. Compulsory reporting causes an administrative burden for the employer, and is counterproductive in terms of "service to employers". But, suspending the duty for reporting vacancies is a big change and could have negative consequences (i.e., fewer vacancies than before). It should go hand-in hand with improved services for employers and a positive image campaign. Another option would be to require that only advertised vacancies should be notified to the PES.

¹⁷ For example, the Czech public employment services had an inspection role concerning general employment conditions until 2005, when this role was transferred to labour inspection.

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- The Ministry lacks know-how enabling a more analytical approach;
 - Statistical and other information are not used in policy making because there is no clarity on the employment creation mandate. In any case, implementation of such a mandate would require numerous additional highly qualified staff.

Recommendations

- a) It is recommended, as a priority issue, to strengthen the capacity of the Ministry to provide up to date information on the labour market developments, including analysis of underlying problems, and formulate policy recommendations;
- b) It is recommended to open wide consultations with employment officers on the application of the new provisions of the Employment Service Act, especially on the reporting obligation of employers;
- c) It is recommended to evaluate the application of the new Act after 12 months following its entry into force and consult with social partners on this issue.

Social Welfare

The Directorate of Social Welfare is responsible for the administration of the National Pensions Act No. 10 of 1992. In specific terms, the Directorate administers the payment of old age and disability grants and the funeral grants for the beneficiaries of the old age and disability grants. There are about 141,527 beneficiaries covered under the Pensions Act, of which 122,910 represent the number of old age and 18,617 people living with disabilities. The Directorate administers payments to the tune of over a billion Namibian Dollars derived from the state budget¹⁸. The staff compliment of the Directorate is currently eight at head office and 57 throughout the administrative regions. There are 34 offices throughout the country giving the services of the Directorate a wide coverage.

Given the number of beneficiaries to be paid and who are found throughout the country, a concern was raised that the available staff were not enough to reach out to remote areas in the country to provide the service. Despite the Directorate having offices in major towns than any other Directorate in the Ministry, these are normally found in the major administrative towns and not rural areas where the beneficiaries are concentrated.

Secondly, the database containing information and relevant particulars for the beneficiaries is maintained and controlled by the office of the Prime Minister. The Directorate therefore has no direct control of the database and has to solicit approval at every instance when a user is added or changes to the fields are to be introduced. Although the Directorate employed a Data Systems Analyst, s/he has only limited access to the database due to the protocols on the system.

Thirdly, coupled with the problem identified above and despite their mandate to administer payment of this huge amount, the Directorate has limited ability to reconcile the payments made vis-à-vis the list of beneficiaries. The Mission was informed that all bank payments are remitted back to the Ministry of Finance since the transfer of funds to beneficiaries' bank accounts is executed within the realm of a contract between the Ministry of Finance and the service provider. As a result, since the Ministry of Labour is not furnished with the relevant information, it is not able to do reconciliation of bank

¹⁸ This information is found from a document entitled "Motivation in respect of the New Proposed Structure of the Directorate of Social Welfare" prepared by the Directorate of Social Welfare.

payments. The Mission is of the view that a system with functions exercised by different offices without proper co-ordination may be open to abuse and accountability problems.

Fourthly, the collection of data for the applicants to the grants is still done manually in the field offices and sent to the Head Office of the Ministry of Labour for capturing in the database. This is not only cumbersome given the number of applications but often results in delays in the electronic capturing of data and payment of the grants to the affected beneficiaries.

The Mission was however informed that the system would soon be improved in that the functions which are currently exercised in the Ministry of Finance and the office of the Prime Minister would be transferred to the Ministry of Labour, and if this was to happen, the Ministry would need to make the necessary adjustment in the current staffing situation.

Recommendations

- a) Since social assistance is another form of social security, it is recommended that Government considers the possibility, in the long run, of transferring the administration of these benefits to the Social Security Commission which has specialized knowledge and capabilities to administer various forms of social security;
- b) Consolidation of the system under one Ministry should be expedited so as to improve on the accountability necessary for payment of public funds and in line with sound financial management procedures and practices;
- c) Consideration be given in the computerization of the system at all levels to improve on data collection;
- d) Government should consider developing a policy to give more guidance on the criteria to be used on the assessment of a degree of disability; and
- e) Staff levels in the Directorate be reviewed to enable effective service delivery to beneficiaries beyond the existing administrative centres.

International affairs

International affairs, and especially the ratification and implementation of international labour standards, and development of regional and bilateral cooperation, are an important part of labour ministries' function in most countries of the world. In times of globalization, when labour and employment conditions in countries all over the world are becoming increasingly interdependent (the current economic crisis is the most recent example of this interdependence), intensification of international links, negotiation of multi- and bilateral agreements (e.g. on access to the labour market, on coordination of social security schemes or on technical cooperation) and exchange of experience and of good practice is in the interest of Namibian labour administration. The current set up and functions of the international affairs unit of the Ministry are, however, problematic from several points of view.

International affairs are based within the Division of International Relations and Advice. In fact, this division covers a series of matters that are not inherently related, such as legal advice, social security, public relations and – most importantly – secretarial services to the Labour Advisory Council. However, some of the posts are used for other purposes (social security, relations with media).

International affairs are mainly focused on ILO-related matters, such as elaboration and implementation of the Decent Work Country Programme (DWCP), ratification of ILO Conventions and ensuing reporting obligations. Other matters include African Union Labour and Social Affairs Commission's affairs, sub-regional affairs within SADC (a tripartite technical committee overseeing the implementation of decisions) development of bilateral relations, and technical cooperation (Botswana, Cuba, Zimbabwe) including the implementation of the memoranda of understanding.

Seven posts are dedicated to support the Labour Advisory Council. This seems like a comparatively high number of officials, taking into account the criticism formulated vis-à-vis the secretariat by several interviewees within and outside of the Ministry, who suggested that the function of the secretariat should go far beyond simply administrative work.

Recommendations

It is recommended to create a unit, attached to the Permanent Secretary's Office, dealing exclusively with international labour affairs. This unit should be able to not only develop international relations in the field of labour and support technical cooperation programmes provided to the Ministry, but also to support research needs of technical departments by gathering and analysing relevant comparative information in the international labour field. The Secretariat of the LAC, currently part of the international affairs and advice unit, should be part of the unit dealing with industrial relations.

4.2.4. Some Cross-Cutting Themes

Budget, Staff and Equipment

No labour administration can satisfactorily fulfil its objectives and reach sufficient influence without appropriate material means and the financial resources and suitably qualified and trained staff, which enjoys a status, guaranteeing its independence from external influences.¹⁹ As evident from various sources, including many ILO studies and labour administration audits, this is often not the case. While most labour ministries in the world would argue that their capacities are disproportionately small in relation to the objectives to be achieved, there are huge gaps between the industrialized and developing worlds²⁰, within world regions and even between neighbouring countries. In Africa, many labour ministries are surviving with budgetary allocations of about one per cent of the national budget, or even lower.

In Namibia, the total budget allocation for 2011/2012 is 1,196,371,000 N\$, which represents an important increase compared to 2010/2011, with the largest percentage increase for Labour Market Services and Labour Services. However, it is alarming that out of the total budget, 1,058,747,000 N\$ represent the expenses on social welfare. In other words, apart from social welfare there are no similar programmes, for example, in the employment field and most other expenses only cover personnel and material costs of running the Ministry and its field offices. As highlighted by Minister Ngatjizeko in his

¹⁹ Article 10, ILO Convention No. 150.

²⁰ For example, the budget of the German Labour and Social Affairs Ministry is the biggest single budget of any German ministry (€143.2 billion in 2010, equivalent to approximately 40 per cent of the State budget). Of the total €143.2 billion, €59.0 billion has been allocated to labour market policy measures (including €23.9 billion for basic income support for unemployed people and €11 billion for ALMPs). By contrast, in some African countries, budgetary allocations of ministries of labour are less than 1 per cent of the state budget (e.g. 0.76 per cent in Benin (2005) or even 0.13 per cent in Togo (2010)). In Central America, budgetary allocations represent 0.15 per cent in Nicaragua (2010) and 0.11 per cent in the Dominican Republic (2010), for example.

Motivation Statement on 19 May 2010, the development budget of the Ministry represent only a fraction of its operational budget.

On the other hand, it should be recognized that rather important public funds are being spent on employment-related issues outside of the Ministry. Of the total budget for TIPEEG (over the period 2011-2014), a programme aimed specifically at addressing economic growth and the high unemployment rate through support to strategic growth sectors (agriculture, transport, tourism, and housing and sanitation) has the total budget of 9.1 billion N\$. Inclusive of Public Works, the allocation for job creation amounts to 14.7 billion N\$²¹. It should be noted that to achieve this increased spending, the Government adjusted the budget deficit target from 5 to 7 per cent of GDP over the 2011-2014 period, leading to increased public debt from 27.4 per cent of GDP in 2011/2012 to 33.9 per cent of GDP in 2013/2014.

Table 1. Approved structure of the Ministry of Labour and Social Welfare

Programme	Budget allocation 2009/2010 N\$	Budget allocation 2010/2011 N\$	Budget allocation 2011/2012 N\$
Labour Market Services	36,198,000	40,598,000	61,059,000
Labour Services	25,350,000	26,899,000	61,059,000
Labour Commissioner	13,367,000	20,284,000	38,351,000
Social Welfare	961,305,000	1,040,997	1,058,747,000
Employment Equity	0	11,404,000	24,898,000
Total	1,036,220,000	1,140,182,000	1,196,371,000

The total number of approved posts at the Ministry are 507; while filled positions are 382, there were 125 vacant positions (77 advertised, 48 non-advertised) during the time of the Mission's visit.

Table 2. Approved structure of the Ministry of Labour and Social Welfare

Approved post	Positions filled	Vacant positions	Advertised	Not advertised
507	382	125	77	48

As discussed under appropriate chapters, the total number of staff, especially in key activities and services provided by the Ministry, such as labour inspection or public employment service, is very low in international comparison. Many approved posts exist in paper, but have never been filled, and the total rate of vacant posts is rather high. Recently however, efforts have been made to increase number of some specialists, for example of inspectors or vocational counsellors.

Another problem, raised with many interviewees, is the inadequacy of the staff's qualifications, due to the cumbersome selection process, regulated by the Public Service Act, 1995, and low attractiveness of working conditions provided by the state administration. Additionally, a major problem raised by the field offices especially, is the inadequacy of training provided to the staff by the Ministry.

The training unit (in fact only one official, the Training Officer) is based in the Human Resources Department. The ultimate responsibility of the training policy is vested in the Office of the Permanent Secretary who appoints the Training Committee, which administers the Human Resources Development Policy (July 2010). Individual staff members apply for participation in various forms of training in consultation with their supervisors. Each staff member is supposed to have a Personal Development Plan, and

²¹ Statement for the 2100/12 budget by Minister of Finance, March 2011.

each unit should have its own annual plan assessing the training needs. Induction training is provided to new employees. Staff can also apply for training funds; the Training Committee checks the relationship between the training requested and the job description while the final decision belongs to the Permanent Secretary. The Ministry also supports formal (qualifying) education by financial subsidies. Occasional training opportunities are also provided by external sources, such as Foreign Affairs, the ILO or individual countries.

Main comments of the interviewees were the following:

- The offer of training is driven by providers and not by the needs of the Ministry and its individual staff members;
- The proportion of staff involved in training activities is very low;
- Training offers are received too late;
- The training does not address the most urgent needs of the Ministry, especially training related to new legislative Acts, such as Labour Act or Employment Service Act, specialized inspection for occupational health and safety inspectors or training on new technologies;
- Training needs, as results from needs assessments, are often not addressed in practice;
- None at all or only very limited training is provided to stakeholders, such as social partners.

Equipment of staff by IT is relatively good, especially compared to other African countries. The Mission was informed that 95 per cent of staff have personal computers. However, many interviewees complained about lack of specialized training in using new technologies. Coverage by the internet in Namibia is very good; however, the use of the 3G technology is centralized and the field employees have difficulties accessing it. The servers are based at the Prime Ministers' Office, which some staff do not see as a practical solution. Maintenance of IT technologies is a cumbersome and time consuming process causing the situation that while hardware is available, often it is not really used.

Within the Ministry, there are four case management systems, however only the system used by labour inspectors is fully functional, while the dispute settlement system works only with similar difficulties to the EEC one, and the national database of jobseekers is in the preparatory phase.

On the other hand, only senior managers have access to office mobile phones, and staff in the field complained about the fact that they have to use their own mobile phones for official purposes and were not reimbursed.

Recommendations

- a) Despite recent strengthening of the staff of the Ministry, the overall level of staffing seems rather weak in terms of the overall number and quality of functionaries, with big gaps between units and individuals. However, the Mission could not assess this issue in detail. It is therefore recommended to proceed in the near future with a comprehensive audit of the staff, the terms of reference of which are attached to this Memorandum as an annex;
- b) Since the impact of TIPEEG is only temporary, the Ministry should be able to develop active labour market measures addressing both high unemployment rate

and lack of qualified workers. Development of training programmes that could be offered to job seekers through employment services could be envisaged. This would obviously require strengthening of the Ministry both in terms of staff of employment services and budget for labour market programmes;

- c) It is recommended to take measures to speed up filling of vacant posts;
- d) It is recommended to review the training needs of technical departments in order to address needs related to new legislative Acts and other urgent needs; and to this end, to cooperate more with outside partners in training specialized categories of personnel.

Performance Management

In times of economic crisis and economic constraints, governments in many countries are concerned about public expenditure. Social policies are also under the close scrutiny of political parties, media and general public. As a result, increased attention is being paid to systems enabling evaluation of policies, increasing cost effectiveness of programmes and improving management of public administration.

The Ministry has been chosen as one of the pilot ministries for the implementation of the performance management system. The basic document needed for strategic planning, the Strategic Plan 2011/12 – 2015/16 has been elaborated, containing strategic objectives linked to strategic themes and also key performance indicators used to measure achievements of targets. This system of organizational performance is now being extended to individual performance via signature of individual performance contracts.

As the system is at its very beginning, its evaluation should be done at the end of the first planning round. However, it is recommended to gather and learn from international experience, especially in the field of labour inspection and public employment services.

Recommendations

To evaluate the results of the pilot stage of PMS and take into account international experience with performance measurement specifically in the field of labour services and labour market services.

5. Field Structure

Namibia is a unitary country, divided in 13 administrative regions. The Ministry of Labour and Social Welfare has its decentralized offices (regional office and sub-offices) in most of them:

Office of the Labour Commissioner has its sub-divisions in Central Region, Northern Region, Southern Region, North-Central Region and North-Eastern Region.

Directorate of Labour Services has its sub-divisions for Central Region, Southern Region, Northern Region, North-Eastern Region and in North Western Region (labour inspectors); and in Northern Region, Central Region, Southern Region, North Western Region and North-Eastern Region (occupational health and safety services).

Directorate of the Social Welfare is represented in all 13 Regions.

Directorate of Labour Market Services is present in Northern Region, North-Eastern Region, Central Region and Southern Region.

Office of the Employment Equity Commissioner is based only in Swakopmund.

The Ministry recently developed significant efforts to extend and improve its field network and new labour offices were opened in Gobabis, Katima, Mulio, Opuwo, Outapui and Rundu. The Mission had an opportunity to visit three regional centres: Keetmanshoop, Oshakati and Swakopmund, and it interviewed local coordinators as well as representatives of different Directorates. While there might be differences in local labour market conditions, some common issues were raised in all three offices:

- Offices are covering large territories and their impact is limited by the low number of staff and the lack of transportation means; their action is thus often limited to the municipality where they are placed;
- All visited offices are placed in relatively modern and well-maintained premises; some of them are however difficult to reach as they are not placed in the city centres (esp. Keetmanshoop). While waiting rooms for the public are relatively decent, there are no receptionists providing information and guidance on available services;
- Office space is a problem in most of them; for example, there are no convenient rooms for the work of psychologist/counsellors (test rooms);
- Management suffers from exaggerated departmentalization of activities. Units have their own work plans that are difficult to coordinate, as supervisors at the headquarters prioritize their own departmental objectives;
- Coordination of activities is done by designated officers with very limited powers. They are supposed to coordinate use of transport, attendance to meetings, etc, but as most activities are decided by the headquarters, the scope for coordination is very limited;
- Centralization of decision making in the headquarters is seen as most problematic in the field of transport, leave, evaluation of the staff, and maintenance;
- Lack of communication means as inspectors are obliged to use their own mobile phones and their costs are not reimbursed;
- No feedback is provided by the headquarters on reports elaborated by regional offices;
- All reparation, acquisition, maintenance are very bureaucratic and time consuming;
- Coordinating officers are not remunerated for their work and they lack motivation for their work. Their selection and appointment process is unclear;
- Regional officers do not have sufficient information on the local labour market; and
- The training provided by headquarters is very limited and does not address local needs, for example when new legislation is adopted.

In any efficient system of labour administration, the Ministry of Labour is responsible for coordinating the operations. The components of the labour administration system (e.g. labour relations, labour inspection, employment services, and social security) should provide periodic reports to the central authority. The information should be technical,

include statistics, outline the issues encountered and indicate the outcome and results achieved.

In doing so, there should be coordination between headquarters and the field offices to enable national laws and regulations to be uniformly applied throughout the country. The labour administration system should also analyze, evaluate, publish and disseminate labour administration information through the website, newsletters, bulletins, newsletters, radio and electronic media.

Recommendations

- a) To review the regional structure to improve coverage by Ministry's services. Substantial reinforcement by additional qualified staff, especially labour inspectors and employment officers. Taking into account the vast territory, creation of further small contact offices might be considered, especially for labour inspection purposes;
- b) In each regional office, to create a position of administrative manager and to review the process of selection;
- c) Elaborate joint regional plans addressing priorities of the region;
- d) To decentralize decision-making in use of transport and travel authorization;
- e) To provide more support to the regions in terms of regional and sectoral analysis of the labour market and to address local training needs (IT, Employment Services Act, Labour Act);
- f) To implement joint general and OHS inspections; and to use systematically a joint inspection form; and
- g) To open a discussion on how to limit the administrative burden of field officers and to shift the work outside of the office.
- h) Where possible, to allocate resources for vehicles and communication means in areas that will have the greatest impact in improving the effectiveness of labour officers in the performance of their functions.

6. ILO Conventions

Since 1978, Namibia has ratified 11 Conventions. These are listed below:

- Forced Labour Convention, 1930 (No. 29), enforced 15.11.2000;
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), enforced 03.01.1995;
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98), enforced 03.01.1995;
- Equal Remuneration Convention, 1951 (No. 100), enforced 06.04.2010;
- Abolition of Forced Labour Convention. 1957 (No. 105), enforced 15.11.2000;
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111), enforced 13.11.2001;

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- Minimum Age Convention, 1973 (No. 193), enforced 15.11.2000 (with the minimum age specified as 14 years old);
 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), enforced 03.01.1995;
 - Labour Administration Convention. 1978 (No. 150), enforced 25.06.1996;
 - Termination of Employment Convention, 1982 (No. 158), enforced 28.06.1996;
 - Worst Forms of Child Labour Convention, 1999 (No. 182), enforced 15.11.2000.

The number of ILO conventions ratified by Namibia is relatively low, compared to other African countries.²² Recently, only one convention (No. 100) was ratified. The Mission was informed that the reason behind this low number is first, a prudent approach of authorities, who are cautious about taking on engagements that cannot be fulfilled and, second, the limited capacity of the Ministry to report on ratified instruments.

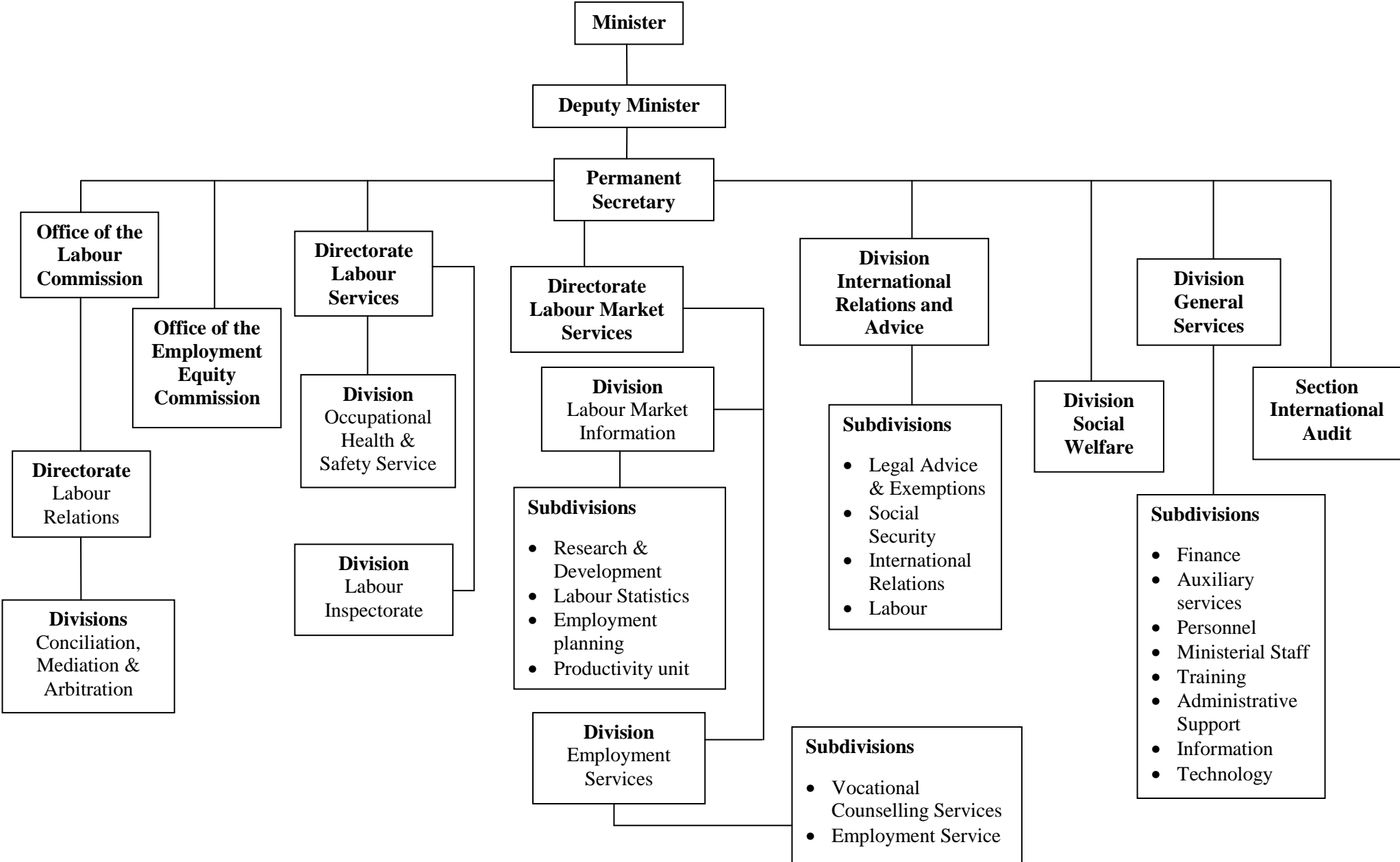
The Mission is of the opinion, that the ratification of ILO governance instruments, especially those related to labour inspection, public employment service and employment policies, would help the Ministry to modernize and strengthen its services and provide the Ministry with useful policy guidelines. The list of conventions to be ratified should be established in consultation with representative employers and workers organizations.

Recommendations

- a) It is recommended to elaborate, in consultations with representative organizations of workers and employers, on a strategy for ratification of ILO standards, taking into account implementation and reporting capacities of the Ministry.
- b) It is recommended to envisage the ratification of ILO Conventions dealing with governance issues, namely: Labour Inspection Convention, 1947 (No. 81), Labour Inspection (Agriculture) Convention, 1969 (No. 129) and Employment Policy Convention, 1964 (No. 122).

²² See Annex 3

Annex 1. Structure of the Ministry of Labour and Social Welfare



Annex 2. Number of Registered unemployed and PES staff in selected middle income countries, end-2008

	Number of registered unemployed, 1000'	Total number of PES staff	Number of PES staff in contact with job seekers and employers	Staff caseload **	Ratio of front-line counsellors to total PERS staff (per cent)
Czech Republic*	480.0	5007	4202	96	84.0
Hungary*	407.0	3500	2280	116	65.0
Slovenia	66.2	861	432	77	50.2
Estonia	32.5	350	260	93	74.3
Latvia	76.4	780	513	98	65.8
Lithuania	95.0	1476	1090	64	73.8
Bulgaria	232.3	2551	1720	91	67.4
Bosnia and Herzegovina, Republica Srpska	134.0	261	158	513	60.5
Croatia	240.0	1251	651	192	52.0
Montenegro	28.4	345	250	82	72.5
Serbia	728.0	2232	1365	326	61.2
FYR Macedonia	343.4	525	276	654	52.6
Moldova	28.1	249	166	113	66.6
Russian Federation	1521.8	36361		42	
Ukraine	844.9	15000		56	
Armenia	74.7	405	370	184	91.4
Azerbaijan	44.5	577	430	77	74.5

Annex 3. Ratification of ILO Convention by selected African countries

Country	No of Conventions Ratified	Recent Ratifications (Between 2001-2011)	Convention Nos.
Botswana	15	N/A	No. 14, No. 19, No. 29, No. 87, No. 95, No. 98, No. 100, No. 105, No. 111, No. 138, No. 144, No. 151, No. 179, No. 176, No. 182.
Lesotho	23	No. 81 in 2001 No. 105 in 2001 No. 138 in 2001 No. 150 in 2001 No. 155 in 2001 No. 158 in 2001 No. 182 in 2001	No. 11, No. 14, No. 19, No. 26, No. 29, No. 45, No. 64, No. 65, No. 81, No. 87, No. 98, No. 100, No. 105, No. 111, No. 135, No. 138, No. 144, No. 150, No. 158, No. 167, No. 182 Denunciation of No. 5
Mozambique	18	No. 29 in 2003 No. 138 in 2003 No. 182 in 2003	No. 1, No. 11, No. 14, No. 17, No. 18, No. 29, No. 30, No. 81, No. 87, No. 88, No. 98, No. 100, No. 105, No. 111, No. 122, No. 38, No. 144, No. 182
Namibia	11	No. 100 in 2010 No. 111 in 2001	No. 29, No. 87, No. 98, No. 100, No. 105, No. 111, No. 138, No. 44, No. 150, No. 158, No.182
South Africa	23	No. 144 in 2003 No. 155 in 2003	No. 2, No. 19, No. 26, No. 29, No. 42, No. 45, No. 63, No. 80, No. 87, No. 89, No. 98, No. 100, No. 105, No. 111, No. 116, No. 38, No. 144, No. 155, No. 176, No. 182 Conditional ratification No. 27 Denunciation of No. 4 and No 41
Zimbabwe	26	No. 87 in 2003 No. 151 in 2003 No. 155 in 2003 No. 162 in 2003 No. 174 in 2003 No. 176 in 2003	No. 14, No. 19, No. 26, No. 29, No. 81, No. 87, No. 98, No. 99, No. 100 No. 105, No. 111, No. 129, No. 135, No. 138, No. 140, No. 144, No. 150, No. 155, No. 159, No. 161, No. 162, No. 170, No. 174, No. 176, No. 182 Denunciation of No. 45

Annex 4. Proposed Terms of Reference for a Human Resources Audit

Namibia Ministry of Labour and Social Affairs

HUMAN RESOURCE AUDIT

TERMS OF REFERENCE

Background

With the request of the Permanent Secretary of the Ministry of Labour and Social Welfare, Namibia, the ILO sent a technical mission to elaborate a technical memorandum with the objective to strengthening and improvement of implementation mechanisms and human resources capacity of the Ministry. It was agreed between the technical mission and the Permanent Secretary, that the submission of the Memorandum should be followed by other mutually agreed steps, including an audit of human resources.

Problems to be addressed

The effective implementation of the Ministry's **Strategic Plan** requires the preparation of a comprehensive operational strategy for each functional responsibility. As highlighted by the ILO Technical Memorandum entitled "Namibia Labour Administration and Labour Inspection Needs Assessment", of particular importance in this regard is the quantity and quality of the Ministry's staff at all levels, in all technical fields, and in all locations. The Ministry's existing work force has been seen as being not 'right' in relation to the Ministry's future purpose, objectives and functions; but the precise quantity and quality of its human resource requirements cannot be finally determined until operational strategies have been prepared and approved. The extent to which the Ministry's existing stock of human resources fits well with its future requirements is largely unknown. Interviews held by the ILO Mission in September 2011 indicate, however, that a revitalization and restructuring exercise of the magnitude proposed will require staff capacities different from the knowledge and skills of existing staff, and the preparation of new job descriptions for all categories of staff – managers, professional and technical staff, as well as clerical and support staff.

It is necessary to assess the existing staff capacity in the Ministry to determine the gap between existing skills and abilities, and those required in future. The 'human resource gap', once identified, might be addressed in a number of ways including new recruitment, retraining, and redundancies. As a starting point for the Ministry's future staffing strategy it is proposed to 'take stock' of the existing staff by conducting a **human resource audit**, with a view to determining the capacity of **existing** staff to perform **future** tasks to the required standard.

Objective

The objective of this consultancy is to contribute to the medium and longer-term efficiency and effectiveness of the Ministry by preparing a human resource audit and generic job descriptions to facilitate the matching of existing human resources with the Ministry's future requirements.

Outputs

The achievement of this objective requires the following outputs.

- A **human resource audit** providing a disaggregation of the Ministry's total staff by age, gender, qualifications, location, position, level, and other relevant criteria will be prepared.
- A detailed **human resource profile** on each individual employee will be prepared.
- Generic **job descriptions** related to the new functions and structure will be prepared for all categories of staff.

Tasks to be performed

The Human Resource Audit will be undertaken by an external consultant, and will be based on the principles of impartiality, transparency and dialogue, consistent with respect for individual confidentiality. The consultant will base the audit on existing human resource records, as well as individual interviews with each employee.

The consultant is expected to complete the work within one month from the date of commencement, and his/her tasks will be the following:

- (a) **Prepare** a summary of the Ministry's existing total human resource stock disaggregated by age, sex, position (senior management, middle management, technical/professional, clerical, support staff), highest education attained, location, employment status (fixed term contract, without time limit), and other key characteristics as indicated by the Ministry;
- (b) **Prepare a human resource profile** for each employee based on existing records and interviews, under the following headings:
 - **General information** (including name, gender, age, current position, place of residence, place of origin (district/province), employment status, years of service);
 - **Qualifications** including **education** levels (certificate, diploma, degrees, higher degrees, including year of completion and main fields of study) and **training** completed (name of training course, year, duration, and skills acquired);
 - **Employment history** including current position, and all previous positions with reference to name of employer, dates and key tasks performed in each position;
 - **Skills profile** including a self-rating (10-point rating scale) by each employee and by his/her immediate superior with reference to:
 - Leadership
 - Verbal communication
 - Written communication
 - Interpersonal relations
 - Problem solving
 - Computer
 - Languages (indicate specific languages)
 - Other (e.g. driving licenses)
 - **Appraisal assessment** by reference to the latest assessment by the Ministry;
 - **Future plans including** reference to career aspirations, plans for higher study, willingness to move to a different location, willingness to undertake further training;

The **Human Resource Profile** will be presented in a standard format to be designed by the consultant, in consultation with senior Ministry officials and the ILO. The information will be used to facilitate the Ministry's decision-making processes concerning the matching of existing staff against future human resource requirements.

- (c) **Prepare** generic job descriptions for all positions as envisaged in the **Future Directions** report.

Requirements

The consultant is expected to have experience in the restructuring of Ministries of Labor in developing countries, and relevant experience in human resource planning and management. Experience in the preparation of job descriptions is also required.

High-level interpersonal, interviewing, and English language (written and spoken) skills are essential.